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ABSTRACT

This study examines many measures of enforcement output and outcomes that help to demonstrate the real impact of funding levels. The information, unless otherwise indicated was drawn from the U.S. Office of Management and Budget (OMB) and agency budget documents for Fiscal Years 1979 through 1996. Resources provided for civil rights enforcement lag behind the workload of the civil rights enforcement agencies. The workload has increased due to enactment of new civil rights laws, considered here some of the "unfunded mandates" of Congress. Although resource availability has improved overall, persons entitled to the protection of the Federal Government cannot be sure of receiving it, particularly on a timely basis. The document includes the following sections: (1) Introduction; (2) Office for Civil Rights, Department of Education; (3) Office for Civil Rights, Department of Health and Human Services; (4) Civil Rights Division, Department of Justice; (5) Equal Employment Opportunity Commission; (6) Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development; (7) Office of Federal Contract Compliance Programs, Department of Labor; and (8) Conclusion. Chapters focus on enforcement authority, enforcement procedures, budget analyses, and coordination responsibilities. The Office of Civil Rights at the Department of Education began handling all civil rights functions in 1979 with the creation of the Department. The enforcement responsibilities include complaint investigations, compliance reviews, enforcement litigation, and higher education desegregation plan reviews. Tables and charts are included. Contains numerous footnotes with bibliographic information. (EH)

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FUNDING FEDERAL CIVIL RIGHTS ENFORCEMENT

A Report of the United States Commission on Civil Rights
June 1995

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U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices;
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin;
- Submit reports, findings, and recommendations to the President and Congress;
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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FUNDING FEDERAL CIVIL RIGHTS ENFORCEMENT

A Report of the United States Commission on Civil Rights
June 1995

Letter of Transmittal

The President
The President of the Senate
The Speaker of the House of Representatives

Sirs:

Enforcement of the civil rights laws of the United States by the Federal Government is integral to the effort to assure equality in access to jobs, housing, education, and services as well as in the administration of justice. While constant evaluation of policy and efficient deployment of available resources are necessary, adequate funding is essential to civil rights enforcement.

This study begins with the analyses in the last Commission report on this subject published in 1983, and shows that resources provided for civil rights enforcement lag behind the workload of the civil rights enforcement agencies, a workload that has increased owing to enactment of new civil rights laws. In this sense, civil rights legislation could be termed, partly, "unfunded mandates." Some of the figures are stark:

- Staffing at the Office for Civil Rights of the Department of Health and Human Services in fiscal year 1996 will be half the level of fiscal year 1981. But complaints are projected to be 44 percent higher in fiscal 1996 than in fiscal 1981.

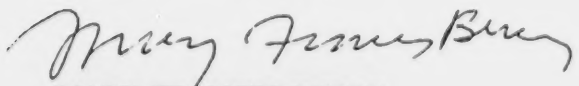
- At the Department of Education's Office for Civil Rights complaints are expected to be 120 percent higher in fiscal year 1996 than in fiscal year 1981. Staffing planned for that office, however, will be 25 percent lower in fiscal 1996 than in fiscal 1981.

- The Equal Employment Opportunity Commission is expected to have 76 percent more complaints in fiscal year 1996 than in fiscal year 1981. The projected staffing level for fiscal 1996 is still lower than the staffing of fiscal 1981.

These figures alone do not tell the whole story, which includes compliance reviews forgone, less than comprehensive investigation, and less litigation. Although, overall, resource availability has improved, the bottom line is that persons entitled to the protection of the Federal Government cannot be sure of receiving it, particularly on a timely basis. We urge you, through provision of adequate resources, to ensure that the Federal civil rights enforcement agencies can fill the mandate you have given them for full and effective enforcement of the Nation's civil rights laws.

Respectfully,

For the Commissioners,



MARY FRANCES BERRY
Chairperson

Acknowledgments

This report was prepared by Conner Ball, Special Assistant to the Staff Director. Other staff members contributing to the report were Carol-Lee Hurley and Ben Dixon.* Legal review was provided by Mark K. Spencer. Editorial review was provided by James S. Cunningham, Gloria Hong Izumi and Charles Rivera.

* No longer with the Commission.

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INTRODUCTION

In 1983, the U.S. Commission on Civil Rights noted that the "civil rights laws create a unique and basic obligation in the Federal Government to protect and enhance legal rights. In the Commission's view, this special responsibility includes an obligation to provide adequate budget and staff resources to enforce these laws."[1] This report concluded, along with reports in the two preceding years, that budget reductions in the resources allocated for civil rights enforcement were threatening the effective enforcement of Federal civil rights legislation.[2] The Commission warned that these reductions would "limit actual enforcement, undercut the deterrent effect of such enforcement by diminishing the credibility of potential Federal action, reduce the motivation and assistance for those who would voluntarily comply with civil rights obligations, and weaken State and local efforts to ensure equal opportunities."[3]

This current study is the first comprehensive assessment of the Federal civil rights enforcement budget since 1983. The study first examines the jurisdiction and enforcement authority of six principal agencies of the Federal government charged with civil rights enforcement: (1) the Office for Civil Rights of the Department of Education; (2) the Office for Civil Rights of the Department of Health and Human Services; (3) the Civil Rights Division of the Department of Justice; (4) the Equal Employment Opportunity Commission; (5) the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development; and (6) the Office of Federal Contract Compliance Programs of the Department of Labor. These agencies represent the majority of the Federal civil rights enforcement resources.

In exploring the jurisdiction of the six civil rights agencies, the impact of new civil rights legislation and executive orders on workload levels and staff demands is examined by this study. The budget analysis covers the first and last years for which budgets were submitted for the Carter, Reagan, and Bush administrations and the FY 1995 and FY 1996 budget requests of the Clinton administration. The first budget for each administration was the one developed by the administration's own appointees. The last budget for each administration was the last one that the administration saw through the congressional process. The report examines the resources requested by the administration and funding actually appropriated by Congress for civil rights enforcement.[4]

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[1] U.S. Commission on Civil Rights, *Federal Civil Rights Commitments: An Assessment of Enforcement Resources and Performance*, pp. 2-3 (November 1983) (hereafter cited as 1983 Budget Report).

[2] *Ibid.*; *see also* U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Budget: Fiscal Year 1983* (June 1982) (hereafter cited as 1982 Budget Report); U.S. Commission on Civil Rights, *Civil Rights: A National, Not a Special Interest* (June 1981) (hereafter cited as 1981 Budget Report).

[3] *1981 Budget Report*, p. 122.

[4] The data is taken from Office of Management and Budget (OMB) and agency budget documents and may not reflect final pay raises, transfers and/or supplements. This information should be accounted for in the actual obligations for each year.

This study is not an enforcement report and does not evaluate qualitative measures such as the efficiency of the workforce or the nature of discrimination. The report does include examination of many measures of enforcement output and outcomes that help to demonstrate the real impact of funding levels. The information in this report, unless otherwise indicated, was drawn from OMB and agency budget documents for FY 1979 through FY 1996. All references to real funding are expressed in constant 1987 dollars.[5] The deflators used are the same as used by OMB in the Historical Tables that accompanied the FY 1996 Budget.[6]

Overview of Enforcement Authority

Prior to the Civil Rights Act of 1957,[7] the Federal civil rights effort was limited to the enforcement of a few post-Civil War criminal statutes by the Civil Rights Section of the Criminal Division of the United States Department of Justice. Since 1957, Congress and the President have expanded greatly the Federal civil rights effort through the creation of additional substantive rights and additional enforcement agencies.

The major congressional and presidential landmarks affecting civil rights enforcement are: (1) the Equal Pay Act of 1963;[8] (2) the Civil Rights Act of 1964;[9] (3) the Voting Rights Act of 1965;[10] (4) President Johnson's Executive Order 11246 in 1965;[11] (5) the Age Discrimination in Employment Act of 1967;[12] (6) Title VIII of the Civil Rights Act of 1968;[13] (7) Title IX of the Education Amendments of 1972;[14] (8) the Equal Employment Opportunity Act of 1972;[15] (9) the Rehabilitation Act of 1973;[16] (10) the Voting Rights Act Amendments of 1975;[17] (11) the Age Discrimination Act of 1975;[18] (12) President Carter's Reorganization Plan No. 1[19] and executive orders[20] relating to

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[5] Expression in constant dollars accounts for inflationary trends, and more accurately reflects the actual purchasing power of the funds received. These adjusted values are referred to throughout the report as real funding or real spending power.

[6] U.S. Office of Management and Budget, *Budget of the United States: Historical Tables, Fiscal Year 1996*, Table 1.3, p. 17 (Washington, D.C.: Government Printing Office, 1995).

[7] Pub. L. No. 85-315, 71 Stat. 634 (1957).

[8] Pub. L. No. 88-38, 77 Stat. 56 (codified at 29 U.S.C. § 206 (1988)).

[9] Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. §§ 2000a et seq. (1988 & Supp. 1994)).

[10] Pub. L. No. 89-110, 79 Stat. 445 (codified at 42 U.S.C. §§ 1973-1973bb-1 (1988)).

[11] Exec. Order No. 11246, 3 C.F.R. § 339 (1964-65), *reprinted in* 42 U.S.C. § 2000e note (1988).

[12] Pub. L. No. 90-202, 81 Stat. 602 (codified at 29 U.S.C. §§ 621-634 (1988)).

[13] Pub. L. No. 90-284, 82 Stat. 81 (codified at 42 U.S.C. §§ 3601-3619 (1988)).

[14] Pub. L. No. 92-318, 86 Stat. 373 (codified as amended at 20 U.S.C. §§ 1681-1688 (1988)).

[15] Pub. L. No. 92-261, 86 Stat. 103 (codified at 42 U.S.C. §§ 2000e-16 (1988)).

[16] Pub. L. No. 93-112, 87 Stat. 394 (codified at 29 U.S.C. §§ 791 et seq. (1988)).

[17] Pub. L. No. 94-73, 89 Stat. 400 (codified at 42 U.S.C. §§ 1973-1973bb-1 (1988)).

[18] Pub. L. No. 94-135, 89 Stat. 728 (codified as amended at 42 U.S.C. §§ 6101-6107 (1988)).

[19] 3 C.F.R. § 321 (1978), *reprinted in* 42 U.S.C. § 2000e-4 note (1988).

[20] *E.g.*, Exec. Order No. 12067, 43 Fed. Reg. 28967 (1978); Exec. Order No. 12250, 3 C.F.R. § 298 (1981), *reprinted in* 42 U.S.C. § 2000d-1 note (1988).

equal opportunity in 1978-1979; (13) the Voting Rights Amendments of 1982;[21] (14) the Civil Rights for Institutionalized Persons Act of 1986;[22] (15) the Housing and Community Development Act of 1987;[23] (16) the Civil Rights Restoration Act of 1987;[24] (17) the Civil Liberties Act of 1988;[25] (18) the Fair Housing Amendments Act of 1988;[26] (19) the Americans with Disabilities Act of 1990;[27] (20) the Civil Rights Act of 1991;[28] and (21) the Voting Rights Language Assistance Act of 1992.[29]

Several statutes, of those mentioned above, have affected significantly the workloads of all the agencies studied. Beginning in 1978, the Reorganization Plan No. 1 restructured the Federal equal employment opportunity enforcement program. The Plan transferred to the EEOC enforcement authority under the Equal Pay Act of 1963 and the Age Discrimination in Employment Act of 1967, and responsibility for duties regarding equal employment enforcement in the Federal government. The Reorganization Plan also consolidated Federal contract compliance enforcement in the Department of Labor, transferring the contract compliance activities of 11 agencies to the Office of Federal Contract Compliance Programs.

The Civil Rights Restoration Act of 1987 also significantly increased the workloads of agencies, such as the Offices for Civil Rights at the Departments of Education and Health and Human Services, and the Office of Fair Housing and Equal Opportunity at the Department of Housing and Urban Development, that enforce Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. These statutes prohibit discrimination based on race, color, national origin, gender, disability and age by any "program or activity" that receives Federal financial assistance. In response to a Supreme Court decision that narrowly construed the definition of "program or activity,"[30] Congress passed the Civil Rights Restoration Act of 1987, which restored the definition to include all the operations of a recipient, so long as any part of the recipient's operations receives Federal funds. This restoration had a major impact on the number of complaints received and processed by the enforcement agencies.

A third major augmentation of enforcement responsibilities occurred with passage of the Fair Housing Amendments Act of 1988, which substantially increased the authority of the Office of Fair Housing and Equal Opportunity at the Department of Housing and

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[21] Pub. L. No. 97-205, 96 Stat. 131 (1982).
[22] Pub. L. No. 96-247, 94 Stat. 349 (codified at 42 U.S.C. §§ 1997-1997j (1988)).
[23] Pub. L. No. 100-242, 101 Stat. 1815 (codified at scattered sections of U.S.C.)
[24] Pub. L. No. 100-259, 102 Stat. 28 (codified at scattered sections of U.S.C.).
[25] Pub. L. No. 100-383, 102 Stat. 904 (codified at 50 U.S.C. §§ 1989b-1989b-8 (1993)).
[26] Pub. L. No. 100-430, 102 Stat. 1619 (codified as amended at 42 U.S.C. §§ 3601-3619, 3631 (1988).
[27] Pub. L. No. 101-336, 104 Stat. 327 (codified at 42 U.S.C. §§ 12101-12213 (Supp. 1994)).
[28] Pub. L. No. 102-166, 105 Stat. 1071 (codified at scattered sections of 2 U.S.C. and 42 U.S.C.).
[29] Pub. L. No. 102-344, 106 Stat. 921 (1992).
[30] *See Grove City College v. Bell*, 465 U.S. 555 (1984) (holding that "program or activity" applies only to the particular program or activity to which the Federal funds are directed).

Urban Development and the Civil Rights Division at the Department of Justice, by adding two new prohibited bases for discrimination and enlarging and strengthening the administrative enforcement scheme.

Most recently, civil rights enforcement responsibilities were expanded significantly with the passage of the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991. The Americans with Disabilities Act prohibits discrimination against qualified individuals with disabilities and provides coverage to some 43,000,000 Americans. Its passage increased the duties of all six agencies studied, but had the most impact on the operations of the Equal Employment Opportunity Commission and the Civil Rights Division at the Department of Justice. The workloads of these two agencies also were increased by passage of the Civil Rights Act of 1991, which expanded the coverage of, and remedies available under, Title VII of the Civil Rights Act of 1964.

Overview of Budget Analysis

This study shows that, as the Commission warned, funding and staffing provided for civil rights enforcement have diminished over the last 15 years. After a period of severe cuts, ground was regained after FY 1989, and enforcement spending continues to be revived. Although resources have increased since FY 1989, the enforcement responsibilities of these agencies also have grown enormously, and the reductions in funding and staff continue to undermine our national enforcement of civil rights.

CHAPTER 1
Office for Civil Rights, Department of Education

In 1979, Congress enacted the Department of Education Organization Act,[1] which established the Department of Education (DOE) in the executive branch of the government, separating it from the Department of Health, Education, and Welfare (HEW). The act also transferred from HEW all education-related civil rights functions.[2] The Office for Civil Rights (OCR) enforces antidiscrimination provisions relating to the dispensing of Federal financial assistance under a variety of education programs and activities. OCR's primary responsibility is to ensure that recipients of Federal financial assistance do not discriminate on the basis of race, color, national origin, sex, disability, or age.

Enforcement Authority

OCR's enforcement responsibilities are rooted in five statutes containing antidiscrimination provisions: (1) Title VI of the Civil Rights Act of 1964;[3] (2) Title IX of the Education Amendments of 1972;[4] (3) section 504 of the Rehabilitation Act of 1973;[5] (4) the Age Discrimination Act of 1975;[6] and (5) Title II of the Americans with Disabilities Act of 1990.[7] Under Title II of the ADA, DOE is the "designated agency" for enforcement with respect to "[a]ll programs, services, and regulatory activities relating to the operation of elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries."[8] OCR also helps implement the civil rights provisions in several Department programs, including the Individuals with Disabilities Education Act,[9] the Carl D. Perkins Vocational Education Act,[10] and the Magnet Schools Assistance Program, Title V, Part A of the Elementary and Secondary Education Act of 1965, as amended.[11]

The many recipients covered by OCR's enforcement authority include: all State education and rehabilitation agencies and their subrecipients; the education and rehabilitation agencies of the District of Columbia, Puerto Rico, the Virgin Islands,

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[1] Pub. L. No. 96-88, 96 Stat. 668 (codified at 20 U.S.C. §§ 3401 et seq. (1988)).
[2] 20 U.S.C. § 3413 (1988).
[3] 42 U.S.C. §§ 2000d-2000d-7 (1988).
[4] 20 U.S.C. §§ 1681-1688 (1988).
[5] 29 U.S.C. § 794 (1988).
[6] 42 U.S.C. §§ 6101-6107 (1988).
[7] 42 U.S.C. §§ 12131-12165 (Supp. 1994).
[8] 28 C.F.R. § 35.190(b)(2) (1993).
[9] Pub. L. No. 94-142, 89 Stat. 773, as amended by Pub. L. No. 101-476, 104 Stat. 1141 (1990) (codified at 20 U.S.C. §§ 1400 et seq. (Supp. 1994)).
[10] Pub. L. No. 98-524, 98 Stat. 2435 (codified at 20 U.S.C. §§ 2301 et seq. (1988)).
[11] Pub. L. No. 103-382, 108 Stat. 3690 (codified at 20 U.S.C. § 7201 (Supp. 1994)).

American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States; virtually every school district and postsecondary institution; thousands of proprietary schools, libraries, museums, and correctional facilities; and any other institutions that receive financial assistance from the Department of Education.

Enforcement Procedures

OCR's enforcement activities include complaint investigations, compliance reviews, corrective action plan monitoring, enforcement litigation, policy development and dissemination, Methods of Administration (MOA) reviews, Magnet Schools Assistance Program reviews, complainant appeals, higher education desegregation plan reviews, technical assistance activities, the Quality Review Program, and Memoranda of Understanding. The majority of OCR staff and resources are devoted to complaint investigations and compliance reviews.

If OCR determines, following a complaint investigation or compliance review, that a violation has occurred, an attempt is made to achieve voluntary compliance by the recipient. If OCR cannot obtain voluntary compliance, it proceeds in one of two ways: it initiates an administrative enforcement proceeding seeking to terminate Federal financial assistance, or it refers the matter to the Department of Justice to seek injunctive relief in Federal court.

Budget Analysis

During the 1980s, resources requested for the OCR dropped steadily (see tables 1 and 2). In real terms, the FY 1989 request of $41,000,000 was 36 percent below the FY 1981 request of $46,915,000. The resources appropriated by Congress dropped also during this period, from $46,915,000 to $41,635,000, a decline, in real spending power, of 36 percent (see figure 1). As a consequence, staffing fell substantially (see figure 2).

Although Congress attempted during the mid-1980s to supplement its budget, OCR failed to utilize available funding, and, further, restricted hiring, diverted funds for obligations to cover overall departmental costs, and allowed millions of dollars to lapse back to the Treasury. For example, in FY 1983 Congress appropriated $44,868,000, the amount requested by the administration, for OCR, but the amount actually obligated for OCR activities was $38,907,000. Five million dollars of OCR's total appropriation was obligated to pay for postal costs attributable to general departmental purposes.[12] In FY

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[12] U.S. Congress, House, Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies of the Committee on Appropriations, *Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 1985*, 98th Cong., 2d Sess., 1984, p. 1426 (testimony of Harry Singleton, Assistant Secretary for Civil Rights) (hereafter cited as DOE/OCR 1985 Appropriations Hearing).

TABLE 1
DOE/OCR Funding History
(In current dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	46,915,000	46,915,000	46,140,000
1982	49,396,000	45,038,000	44,206,000
1983	44,868,000	44,868,000	44,868,000[1]
1984	42,058,000	49,396,000	44,396,000
1985	42,633,000	45,000,000	44,580,000
1986	42,938,000	42,704,000	41,759,000
1987	38,185,000	43,000,000	41,713,000
1988	42,975,000	40,530,000	40,314,000
1989	41,341,000	41,635,000	41,234,000
1990	45,178,000	44,572,000	44,535,000
1991	49,900,000	48,404,000	48,287,000
1992	56,000,000	53,625,000	53,342,000
1993	61,400,000	56,402,000	56,135,000
1994	56,570,000	56,570,000	56,454,000
1995	61,700,000	58,325,000	
1996	62,784,000		

[1] $5,000,000 actually obligated for general departmental postage.

TABLE 2
DOE/OCR Funding History
(In millions of constant 1987 dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	60.0	60.0	59.0
1982	59.0	53.8	52.8
1983	51.1	51.1	51.1[1]
1984	46.1	54.1	48.7
1985	45.1	47.6	47.2
1986	44.1	43.9	42.9
1987	38.2	43.0	41.7
1988	41.5	39.1	38.9
1989	38.2	38.5	38.1
1990	40.0	39.5	39.5
1991	42.3	41.1	41.0
1992	46.0	44.0	43.8
1993	49.1	45.1	44.9
1994	44.2	44.2	44.1
1995	46.8	44.3	
1996	46.2		

[1] $5,000,000 actually obligated for general departmental postage.

FIGURE 1
DOE/OCR Funding History, 1981-1996, in 1987 Dollars

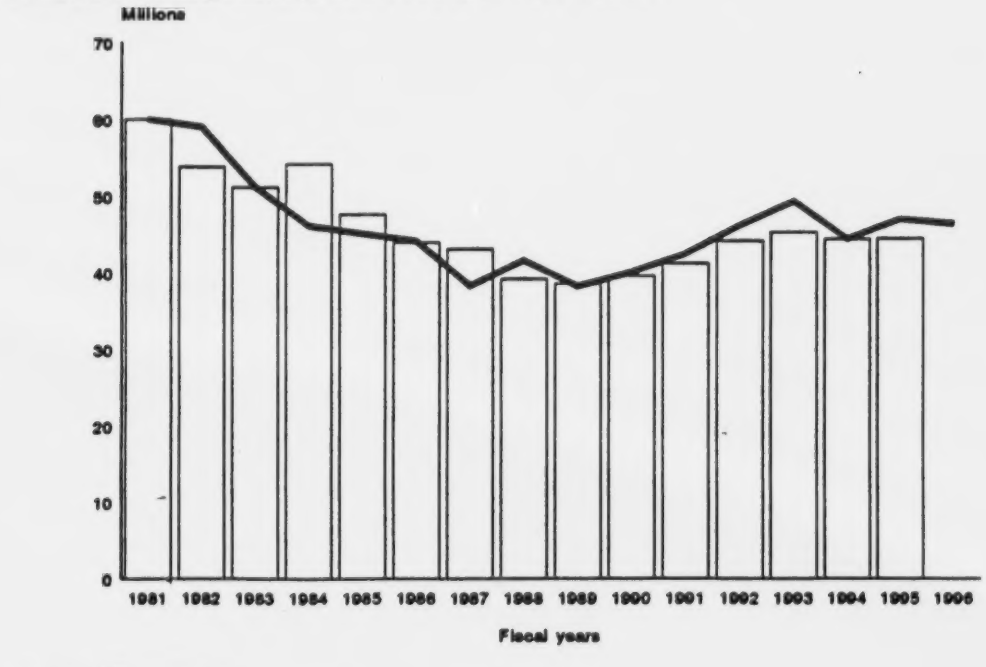
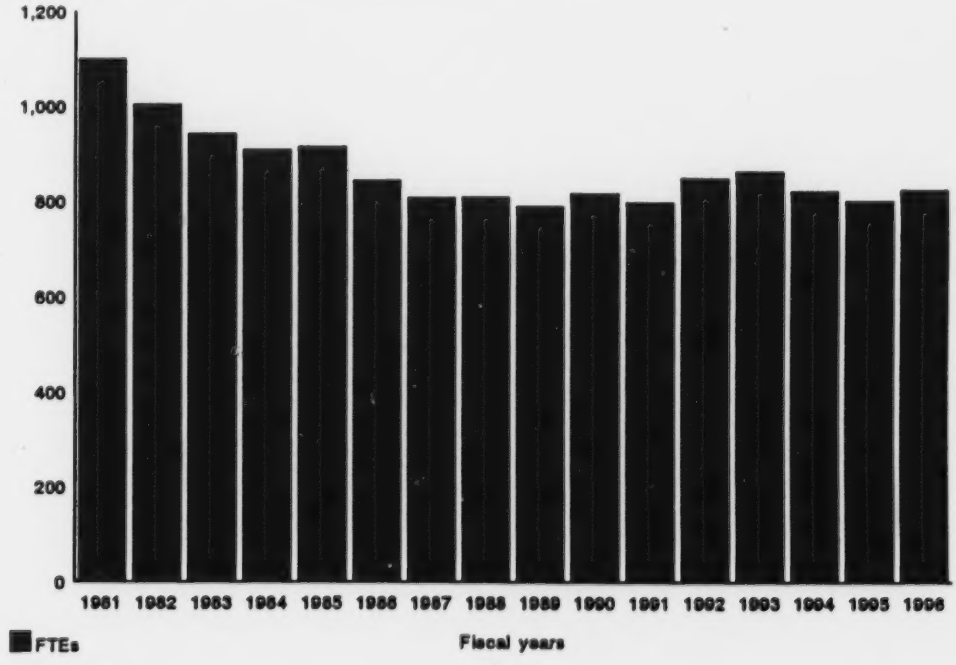


FIGURE 2
DOE/OCR, Full-Time Equivalent Summary, 1981-1996



1996 = estimate

1984 this trend continued, with OCR allowing $7 million in funds to lapse.[13] Similarly, in FY 1985 OCR allowed $2,448,000 to lapse, and in FY 1986 allowed $2,569,000 to lapse.[14]

As a consequence of reduced appropriations, compounded by spending shortfalls by the administration, OCR staff also fell dramatically. From a FTE level of 1,099 in FY 1981, staffing dropped to 789 FTE in FY 1989, a decline of 28.2 percent (see table 3).

This loss was particularly significant because, until 1987, OCR was under a court order with respect to complaint investigations and compliance reviews, resulting from a 1970 lawsuit brought against OCR for failure to enforce Title VI.[15] The court in *Adams* had found that staff shortages contributed to OCR's failure to meet the court's time frames for complaint processing, and that the Government was not doing all that it could to obtain additional staff.[16] Even though the court held that OCR was not upholding its obligation to adequately enforce the laws, the resources requested continued to decline.

TABLE 3
DOE/OCR Staffing History

Year	FTE level	Year	FTE level
1981	1,099	1989	789
1982	1,002	1990	815
1983	941	1991	797
1984	907	1992	848
1985	913	1993	862
1986	843	1994	821
1987	807	1995*	800
1988	808	1996*	824

*Estimate

[13] *Ibid.* at 1407. After Congress learned that the money was going to lapse if not spent, it transferred $5 million of it to Howard University, resulting in a lapse of $2.630 million. U.S. Congress, House, Intergovernmental Relations and Human Resources Subcommittee of the Committee on Government Operations, *Investigation of Civil Rights Enforcement by the Department of Education*, 99th Cong., 1st Sess., 1985, p. 177 (hereafter cited as DOE/OCR 1985 Oversight Hearings).

[14] Majority Staff of House Committee on Education and Labor, 100th Cong., 2d Sess., *Report on the Investigation of the Civil Rights Enforcement Activities of the Office for Civil Rights U.S. Department of Education* 101 (Comm. Print 1988) (hereafter cited as 1988 Comm. Staff Report).

[15] Adams v. Richardson, 356 F. Supp. 92 (D.D.C.), *aff'd*, 480 F.2d 1159 (D.C. Cir. 1973) (en banc) (first Adams decision).

[16] In a March 11, 1983 order, the court stated that "if the government is 'left to its own devices, the manpower that would normally be devoted to this type of thing, ... might be shunted off into other directions, will fade away and the substance of compliance will eventually go out the window.'" Adams, et al. v. Bell, No. 3095-70 (D.D.C. Mar. 11, 1983).

TABLE 4
DOE/OCR Workflow History

Year	Complaints received	Complaints closed	Compliance reviews begun
1981	2,889	3,321	136
1982	1,840	2,272	208
1983	1,940	2,264	287
1984	1,934	1,966	220
1985	2,240	2,045	286
1986	2,648	2,795	197
1987	1,976	2,194	240
1988	3,532	2,786	247
1989	2,840	3,207	138
1990	3,384	3,182	32
1991	3,809	3,494	41
1992	4,432	4,173	77
1993	5,090	4,480	101
1994	5,276		144
1995*	5,856		200
1996*	6,349		200

* Estimate

Congress attempted to keep OCR on line with the judge's order and provide sufficient staff for thorough complaint processing and compliance reviews. For FY 1984, the Senate Appropriations Committee directed OCR to have a minimum staffing level of 1,046 FTEs, but the actual FTE level for FY 1984 was 907. In an oversight hearing before a subcommittee of the Committee on Government Operations, then-Assistant Secretary for Civil Rights, Harry Singleton, indicated that in FY 1984 OCR received "quite a large appropriation to staff up to a higher level. And our orders were not to staff up to that higher level."[17] Although during this hearing Mr. Singleton maintained that OCR had sufficient resources and staff, in fact too much, he also indicated that the Quality Assurance Unit at OCR was disbanded in 1985 "as a result of pressing resource needs."[18]

The number of complaint investigations and compliance reviews initiated from FY 1981 to FY 1989 by OCR staff remained relatively stable (see table 4).

There was some indication, though, that the quality of the enforcement suffered.[19]

[17] DOE/OCR 1985 Oversight Hearings, p. 177.

[18] *Ibid.* at 107.

[19] In 1986, an investigation by the DOE Office of the Inspector General and an internal DOE investigation determined that some regional OCR staff had been backdating documents in order to appear in compliance with the *Adams* (continued...)

As noted by Michael Williams, Assistant Secretary for Civil Rights during the Bush administration, "[i]n previous years, ... the focus was on conducting as many reviews as possible, and, as a result, the regions often conducted reviews of limited scope and with limited impact on beneficiaries."[20]

Funding requests and appropriations for OCR both increased substantially from FY 1989 to FY 1993 (see tables 1 and 2). In real terms, the resources requested increased 28 percent. Congressional appropriations rose also, although not as greatly, increasing 17 percent in real spending power. In FY 1992 and FY 1993, Congress appropriated significantly less than requested by the administration. With this increased funding, the staffing level also began to rise, from 789 FTEs in 1989 to 862 FTEs in 1993 (see table 3). The ability of OCR to increase staffing more rapidly was adversely affected by restricted funding in previous years. For example, in FY 1991 the FTE ceiling was 820, but OCR was only able to fund 797 FTEs due to a need for ADP equipment, staff training and supplies that had been delayed in previous years due to budget constraints.[21]

This increased staffing was vital for OCR given a rapidly increasing workload. One cause for the increasing number of complaints filed with OCR was passage of the Civil Rights Restoration Act of 1987. From the act's passage in 1987 until FY 1994, the number of complaints received by OCR increased 168 percent (see table 4). OCR also reopened over 500 complaints that previously had been closed or had too narrow a focus under the restricted interpretation of "program or activity."[22] In addition to an increase in the number of complaints, OCR also experienced an increase in complex, multi-issue complaints, involving limited-English proficient students and AIDS-related issues.[23] During this period of expanding workloads, staffing for OCR increased only 2 percent.

The increased complaint workload negatively impacted on OCR's ability to carry out compliance reviews, which began to drop steadily after FY 1988 (see figure 3). Although this decline reflects to some extent the desire of former Assistant Secretary Michael Williams to change "the focus of OCR's compliance review program from an

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[19](...continued)
deadlines, and persuading complainants to withdraw complaints that exceeded the *Adams* deadlines. *See* U.S. Congress, House, Human Resources and Intergovernmental Relations Subcommittee of the Committee on Government Operations, *Civil Rights Enforcement by the Department of Education*, 100th Cong., 1st Sess., 1987, pp. 71, 173 (hereafter cited as DOE/OCR 1987 Oversight Hearing). DOE indicates that immediate disciplinary action was taken and corrective measures put in place.

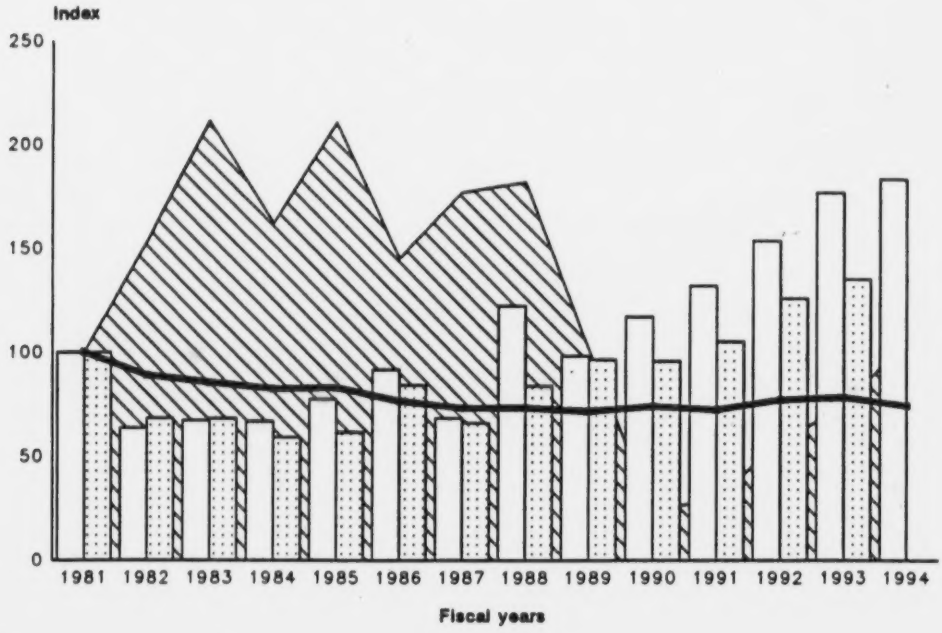
[20] U.S. Congress, Senate, Committee on Labor and Human Resources, *Oversight Hearing: Office for Civil Rights, Department of Education*, 102d Cong., 1st Sess., 1991, p. 15 (hereafter cited as DOE/OCR 1991 Oversight Hearing).

[21] U.S. Department of Education, Office for Civil Rights, *Fiscal Year 1992 Budget Request*, p. 17 (hereafter cited as DOE/OCR FY 1992 Budget).

[22] U.S. Department of Education, Office for Civil Rights, *Fiscal Year 1990 Budget Request*, p. 1701 (hereafter cited as DOE/OCR FY 1990 Budget). Prior to passage of the Civil Rights Restoration Act, investigations were restricted to the program or activity actually receiving Federal funds, as mandated by the *Grove City* decision.

[23] DOE/OCR FY 1992 Budget, p. 17.

FIGURE 3
DOE/OCR Staffing, Complaints Received and Closed, and Compliance Reviews Initiated, 1981-1994



1981 = 100; FTEs, 1,099; complaints received, 2,889, and closed, 3,321; compliance reviews, 138.

emphasis on overall numbers to an emphasis on impact,"[24] it is attributable primarily to the increased complaint caseload and the need to direct resources to complaint investigations.[25] In FY 1990, for example, OCR was able to devote only 3 percent of its staff to compliance reviews.[26] The number of compliance reviews initiated dropped from 245 in FY 1988 to 32 in FY 1990 (see table 4).

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[24] DOE/OCR 1991 Oversight Hearing, p. 15.
[25] DOE/OCR FY 1992 Budget, p. 14.
[26] U.S. Department of Education, Office for Civil Rights, *Fiscal Year 1990 Annual Report to Congress*, p. 4 (hereafter cited as DOE/OCR FY 1990 Annual Report).

As shown by tables 1 and 2, the FY 1996 budget request for OCR represents, in constant dollars, a decline of 6 percent over the FY 1993 request, although it is a 4.3 percent increase, in real terms, over the FY 1995 appropriation. Resources appropriated by Congress between FY 1993 and FY 1995 decreased by 2 percent in real funding. Staffing has continued to drop over this period, even as the workload at OCR has increased steadily (see table 3). The actual FTE level in FY 1993 was 863, compared to a proposed FY 1996 FTE level of 824. The FY 1994 and FY 1995 appropriation requests each supported 13 fewer FTEs than the previous year. These reductions were part of the President's initiative to reduce the deficit and cut the Federal work force by 100,000 by FY 1995.[27] The FY 1996 budget request further reduces the FTE level by 9.[28]

This reduction in FTEs comes at a time when the number of complaints received is projected to rise to 6,349 in FY 1996, an increase of 20 percent over FY 1994.[29] Additionally, in 1993, OCR announced a strategic plan that would shift 40 percent of OCR's resources from complaint investigation to compliance reviews, policy development, and technical assistance, more proactive and effective enforcement mechanisms.[30] Such a focus may not be possible with the reduced staff and increasing complaint caseload.

The FY 1996 budget does request increases for travel and training, both integral components of an effective compliance program, and program areas that have suffered in the past. For example, in FY 1984, OCR spent $1,010,000 for staff travel. By FY 1989, the amount obligated for travel had fallen to $615,000, but began to rise again, reaching $843,000 by FY 1994. The FY 1996 request includes $1,068,000 for travel.[31] The request also increases funds for staff training, requesting $451,000, compared to $54,000 provided for training in FY 1988.[32] With fewer staff available for compliance activities, resources for training and travel are even more critical.

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[27] U.S. Department of Education, Office for Civil Rights, *Fiscal Year 1994 Budget Request*, p. 10 (hereafter cited as DOE/OCR FY 1994 Budget); U.S. Department of Education, Office for Civil Rights, *Fiscal Year 1995 Budget Request*, p. 11 (hereafter cited as DOE/OCR FY 1995 Budget).

[28] OCR indicates that most of these cuts have come from the clerical staff, and that attorneys, with the use of computers, have been able to maintain productivity.

[29] U.S. Department of Education, Office for Civil Rights, *Fiscal Year 1996 Budget Request*, p. 14 (hereafter cited as DOE/OCR FY 1996 Budget).

[30] DOE/OCR FY 1995 Budget, p. 11.

[31] *See* U.S. Department of Education, Office for Civil Rights, *Fiscal Year 1986 Budget Request*, p. 386 (hereafter cited as DOE/OCR FY 1986 Budget); U.S. Department of Education, Office for Civil Rights, *Fiscal Year 1991 Budget Request*, p. 4 (hereafter cited as DOE/OCR FY 1991 Budget); DOE/OCR FY 1996 Budget, p. 3.

[32] DOE/OCR FY 1990 Budget, p. 348; DOE/OCR FY 1996 Budget, p. 3.

CHAPTER 2
Office for Civil Rights, Department of Health and Human Services

On March 12, 1953, President Eisenhower transmitted to the Congress Reorganization Plan No. 1, creating the Department of Health, Education, and Welfare (HEW).[1] In 1979, enactment of the Department of Education Organization Act[2] divested HEW of most functions relating to education, including civil rights enforcement authority. Congress renamed HEW the Department of Health and Human Services (HHS), leaving with it the enforcement of antidiscrimination provisions applicable to all programs and activities relating to health and human services. The Office for Civil Rights (OCR) administers numerous statutes that prohibit discrimination by providers of health care and social services.

Enforcement Authority

OCR enforces Title VI of the Civil Rights Act of 1964,[3] Title IX of the Education Amendments of 1972,[4] section 504 of the Rehabilitation Act of 1973,[5] and the Age Discrimination Act of 1975,[6] which prohibit discrimination by recipients of Federal financial assistance based on race, color, national origin, sex, age, and disability. In 1978, Congress extended section 504 to programs and activities conducted by the United States Government itself.[7] Further expansion of OCR's enforcement responsibility with respect to the protection of persons with disabilities occurred in 1990 with passage of the Americans with Disabilities Act (ADA).[8] Under the implementing regulations for Title II of the ADA, HHS is to ensure compliance in the following areas:

> All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including "grass roots" and community services organizations and programs, and preschool and daycare programs.[9]

OCR also has enforcement authority under the Public Health Service Act, which prohibits discrimination on the basis of sex in admission to health-related training

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[1] 18 Fed. Reg. 2053 (1953).
[2] 20 U.S.C. §§ 3401 et seq. (1988).
[3] 42 U.S.C. §§ 2000d-2000d-7 (1988).
[4] 20 U.S.C. §§ 1681-1688 (1988).
[5] 29 U.S.C. § 794 (Supp. 1994).
[6] 42 U.S.C. §§ 6101-6107 (1988).
[7] Pub. L. No. 95-602, Title I, § 119, 92 Stat. 2955 (codified at 29 U.S.C. § 794 (Supp. 1994)).
[8] 42 U.S.C. §§ 12131-12213 (Supp. 1994).
[9] 28 C.F.R. § 35.190(b)(3) (1993).

programs funded under the act,[10] and requires facilities assisted by the Hill-Burton Act to provide health care services to all persons residing in the service area in a nondiscriminatory manner.[11] Finally, OCR enforces provisions of the Omnibus Reconciliation Act of 1981 (OBRA),[12] which requires nondiscrimination on the basis of race, color, national origin, disability, age, sex, and/or religion in health care and other block grant programs.

OCR estimates that approximately 230,000 group and institutional providers of federally assisted services are subject to the nondiscrimination laws it enforces. Recipients of HHS funds include hospitals, extended care facilities, community mental health centers, alcohol and drug treatment centers, family and children programs, State and local public assistance agencies, adoption agencies, foster care homes, and senior citizens programs.[13]

Enforcement Procedures

To enforce the nondiscrimination provisions of these statutes, OCR relies on a compliance program that includes complaint investigations, compliance and other reviews, monitoring of corrective action plans, and voluntary compliance and outreach activities. OCR attempts to resolve all instances of noncompliance through the negotiation of voluntary agreements. However, if the matter involving noncompliance cannot be resolved voluntarily to the satisfaction of all parties, OCR may effect compliance by "the suspension or termination of or refusal to grant or continue Federal financial assistance or by any other means authorized by law."[14] Such other means may include: (1) referring the case to the Attorney General for enforcement proceedings; (2) pursuing HHS administrative enforcement proceedings; or (3) the invoking of "any applicable proceeding under State or local law."[15]

Budget Analysis

Of the six agencies studied, HHS is the only one whose FY 1996 budget request, even in nominal dollars, is below the FY 1981 request. Moreover, the real spending power of the FY 1996 budget request is 50 percent below the FY 1981 level. Resources appropriated by Congress over that same period fell 34 percent in real terms (see figure 4). This pattern of funding severely reduced OCR's staffing: the projected level of 274 FTEs for FY 1996 would represent a 47 percent decline in staffing since FY 1981 (see figure 5).

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[10] 42 U.S.C. §§ 295m, 298b-2 (1988 & Supp. 1994).
[11] 42 U.S.C. § 291c(e) (1988).
[12] Pub. L. No. 97-35, 95 Stat. 357 (1981).
[13] U.S. Department of Health and Human Services, Office for Civil Rights, *Fiscal Year 1996 Budget Request*, p. 88 (hereafter cited as HHS/OCR FY 1996 Budget).
[14] 45 C.F.R. § 80.8(a) (1993).
[15] *Id.*

FIGURE 4
HHS/OCR Funding History, 1981-1996, in 1987 Dollars

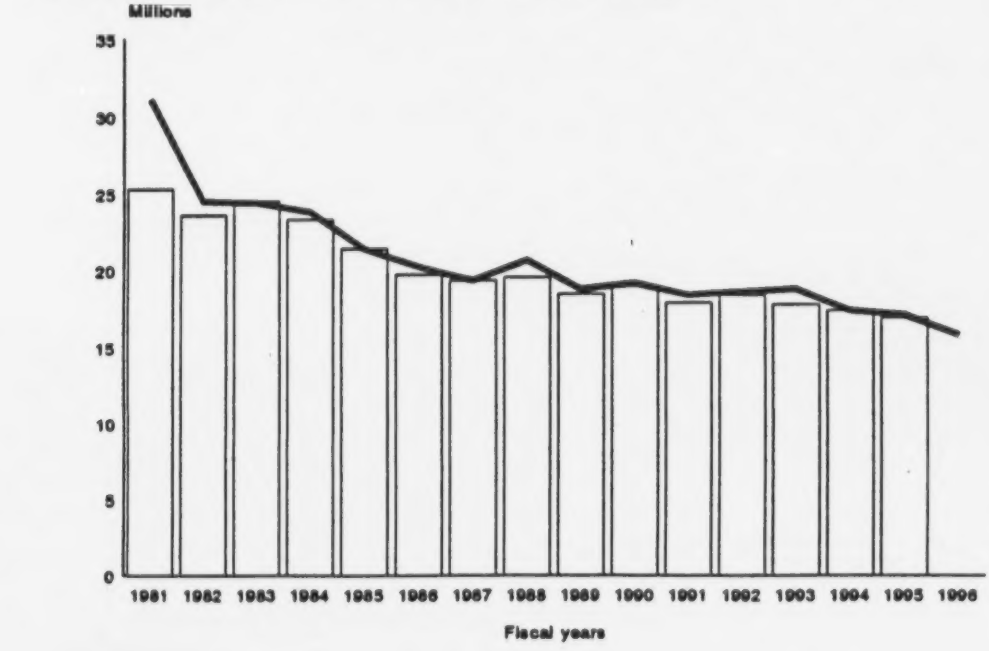
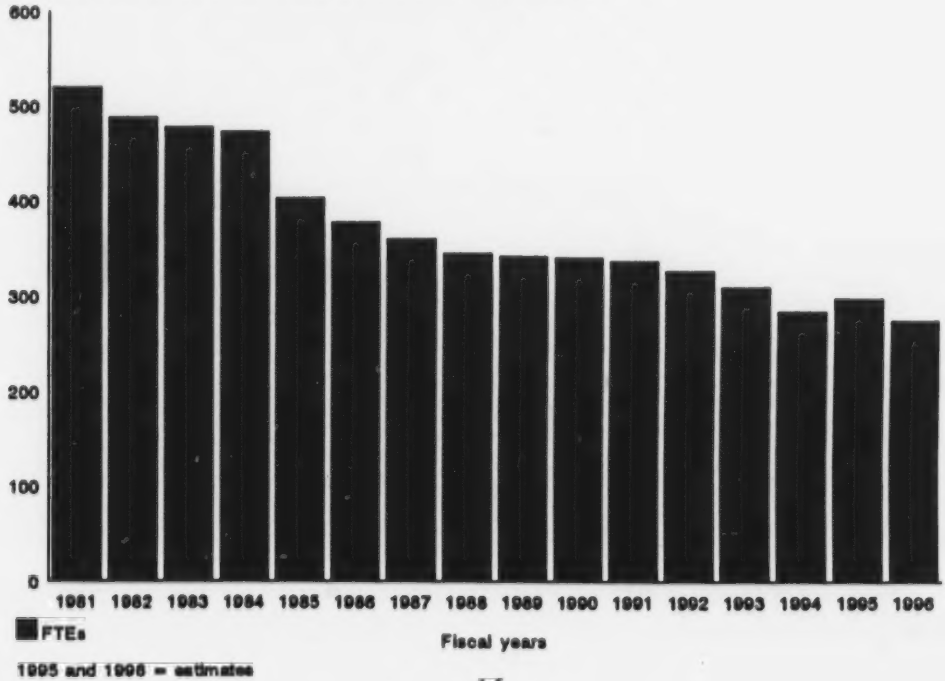


FIGURE 5
HHS/OCR Full-Time Equivalent Summary, 1981-1996



1995 and 1996 = estimates

The largest decreases in funding occurred from FY 1981 to FY 1989, when the resources requested declined steadily, overall falling 40 percent in constant dollars. Funding actually appropriated by Congress declined 27 percent (see tables 5 and 6).

During this same period, the FTE level dropped 34.3 percent, from 519 to 341 (see table 7). The initial FY 1982 budget requested $28,249,000 and 690 FTEs, but was revised by the incoming administration to $20,489,000 and 524 FTEs. This curtailment halted an initiative begun in FY 1981 to conduct additional compliance reviews, which are considered one of the most effective tools in assuring compliance with Federal civil rights requirements.[16] Instead, the FY 1982 budget request reduced the staff assigned to compliance reviews by 41 positions and focused resources on complaint investigations as opposed to reviews and technical assistance.[17]

Staff assigned to conduct compliance reviews continued to shrink throughout the 1980s. In FY 1981, 153 FTEs were assigned to conduct comprehensive compliance

TABLE 5
HHS/OCR FUNDING HISTORY
(In current dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	24,281,000	19,770,000	19,644,000
1982	20,489,000[1]	19,716,000	19,044,000
1983	21,413,000	21,513,000	20,761,000
1984	21,713,000	21,295,000	20,899,000
1985	20,200,000	20,200,000	20,073,000
1986	19,636,000	19,140,000	19,124,000
1987	19,285,000	19,285,000	19,065,000
1988	21,395,000	20,173,000	19,944,000
1989	20,173,000	19,931,000	19,923,000
1990	21,567,000	21,294,000	21,115,000
1991	21,585,000	20,970,000	20,994,000
1992	22,524,000	22,280,000	22,225,000
1993	23,358,000	22,183,000	22,194,000
1994	22,182,000	22,195,000	22,041,000
1995	22,390,000	22,096,000	
1996	21,330,000		

[1] The initial request prepared by the Carter administration was $28,249,000. This was adjusted by the incoming administration.

[16] U.S. Department of Health and Human Services, Office for Civil Rights, *Fiscal Year 1981 Budget Request*, p. 1237 (hereafter cited as HHS/OCR FY 1981 Budget).

[17] U.S. Department of Health and Human Services, Office for Civil Rights, *Fiscal Year 1982 Budget Request*, p. 85 (hereafter cited as HHS/OCR FY 1982 Budget).

reviews. These reviews included on-site visits, encompassed compliance with several civil rights statutes, and resulted in remedial action benefiting a substantial number of people.[18] By FY 1984, 129 FTEs were assigned to comprehensive compliance reviews,

TABLE 6
HHS/OCR Funding History
(In millions of 1987 constant dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	31.1	25.3	25.1
1982	24.5	23.6	22.8
1983	24.4	24.5	23.7
1984	23.8	23.3	22.9
1985	21.4	21.4	21.2
1986	20.2	19.7	19.6
1987	19.3	19.3	19.1
1988	20.6	19.5	19.2
1989	18.7	18.4	18.4
1990	19.1	18.9	18.7
1991	18.3	17.8	17.8
1992	18.5	18.3	18.2
1993	18.7	17.7	17.7
1994	17.3	17.3	17.2
1995	17.0	16.8	
1996	15.7		

TABLE 7
HHS/OCR Staffing History

Year	Staffing level	Year	Staffing level
1981	519	1989	341
1982	487	1990	340
1983	477	1991	336
1984	472	1992	326
1985	402	1993	309
1986	377	1994	284
1987	359	1995*	297
1988	344	1996*	274

* Estimate

[18] U.S. Department of Health and Human Services, Office for Civil Rights, *Fiscal Year 1984 Budget Request*, p. 116 (hereafter cited at HHS/OCR FY 1984 Budget).

and by FY 1989, this number had fallen to 58 FTEs, a total reduction of 62 percent.[19] During this period, the coverage and impact of the reviews also changed, as OCR, beginning in FY 1983, focused on project reviews, as opposed to compliance reviews.[20] Project reviews were narrower and less complex than compliance reviews. Specifically, they were shorter in duration, generally did not involve on-site investigations, focused only on a particular compliance problem or civil rights statute, and did not result in formal findings of noncompliance.[21]

The compliance review staff also was responsible for conducting pre-grant reviews. Pre-grant reviews are mandatory and are required whenever a healthcare facility applies to participate in the medicare program. During the mid-1980s, the number of pre-grant reviews rose substantially, due to changes in the medicare regulations that allowed home health agencies to participate, thus reducing resources available for compliance reviews.[22]

During this same period, the staff directed toward complaint processing fell also, though not as rapidly, from 256 FTEs in FY 1981 to 166 FTEs in FY 1989, a decline of 35 percent.[23] Staff provided for OCR's Office of General Counsel also fell dramatically from FY 1981 to FY 1989. The Office of General Counsel is responsible for carrying out OCR's administrative enforcement procedures and for referring cases to the Department of Justice for, and assisting the Department with, litigation involving civil rights violations. In FY 1981, 62 FTEs were allocated for the Office of General Counsel. By FY 1989, this level had fallen to 24 FTEs (see table 8).

TABLE 8
HHS/OCR Office of General Counsel Staffing 1981-1989

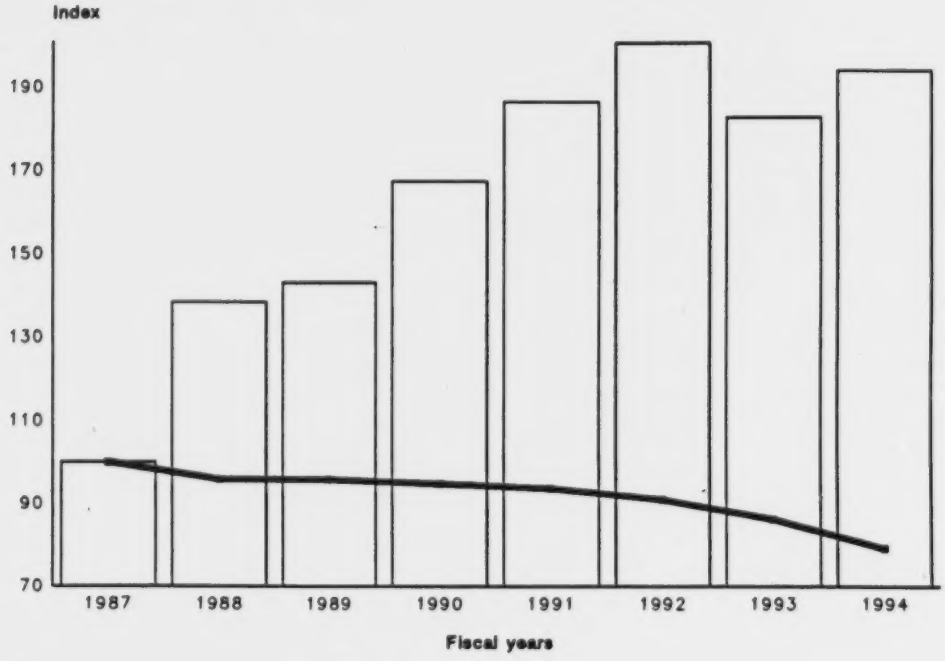
Year	Staffing level	Year	Staffing level
1981	62	1986	28
1982	61	1987	26
1983	55	1988	25
1984	40	1989	24
1985	33		

[19] *See* U.S. Department of Health and Human Services, Office for Civil Rights, *Fiscal Year 1985 Budget Request*, pp. 78-79 (hereafter cited as HHS/OCR FY 1985 Budget); U.S. Department of Health and Human Services, Office for Civil Rights, *Fiscal Year 1991 Budget Request*, p. 128 (hereafter cited as HHS/OCR FY 1991 Budget).
[20] HHS/OCR FY 1985 Budget, p. 78.
[21] *Ibid.* at 77.
[22] U.S. Department of Health and Human Services, Office for Civil Rights, *FY 1986 Budget Request*, p. 72 (hereafter cited as HHS/OCR FY 1986 Budget).
[23] *See* HHS/OCR FY 1982 Budget, p. 85; HHS/OCR FY 1991 Budget, p. 128.

Between FY 1989 and FY 1993, the decline in OCR's budget slowed, but resources still were not sufficient to manage the increasing workload. The FY 1993 budget request, in real terms, reflected no increase over the FY 1989 request. The resources appropriated by Congress fell by 4 percent in real spending power (see tables 5 and 6). The staffing level continued to fall, by 9.4 percent, from FY 1989 to FY 1993 (see table 7).

After 1987, OCR's complaint caseload began to rise dramatically (see figure 6).

FIGURE 6
HHS/OCR Staffing and Complaints Received, 1987-1994



1987 = 100; FTEs, 359; complaints received, 1,148

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TABLE 9
HHS/OCR Complaints Received 1987-1994

Year	Complaints	Year	Complaints
1987	1,148	1991	2,138
1988	1,589	1992	2,299
1989	1,642	1993	2,094
1990	1,920	1994	2,222

As demonstrated by table 9, the number of complaints received in FY 1993 reflected a 82 percent increase over the FY 1987 level.

This rise in complaints was attributable to passage of the Civil Rights Restoration Act and to large increases in AIDS complaints and other §504 disability cases. The new and more complex AIDS-related complaints increased from 57 in FY 1987 to 170 in FY 1992, after reaching 246 in FY 1991.[24] These cases focus on protecting persons with AIDS against unlawful discrimination and ensuring that minority groups have an equal opportunity to participate in and benefit from federally assisted programs and activities designed to combat the AIDS epidemic and to treat AIDS patients.[25]

This increased complaint caseload required OCR to reduce more drastically the staff allocated for conducting compliance reviews. In FY 1993, 65 FTEs were assigned to conduct all reviews, representing 21 percent of the total FTE level. It was estimated that only 20 of those 65 FTEs conducted comprehensive compliance reviews.[26] Conversely, by FY 1993, 181 FTEs, or 59 percent of the total staff, were allocated to handle the rising complaint caseload.[27] Even with this shift in resources, the on-hand inventory of complaints rose by 150 percent from FY 1987 to FY 1993.[28]

From FY 1993 to the FY 1996, the resources requested for OCR fell by 16 percent in constant dollars. The actual resources appropriated fell 5 percent in real funding from FY 1993 to FY 1995 (see tables 5 and 6). At the same time, the FTE levels have continued to decline, falling another 11 percent, from 309 FTEs in FY 1993 to a

[24] U.S. Department of Health and Human Services, Office for Civil Rights, *Fiscal Year 1990 Budget Request*, p. 126 (hereafter cited as HHS/OCR FY 1990 Budget); Dennis Hayashi, Director, Office for Civil Rights, U.S. Department of Health and Human Services letter to Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights, May 30, 1995, Comments of the Department of Health and Human Services, pp. 1-2 (hereafter cited as HHS comments).

[25] U.S. Department of Health and Human Services, Office for Civil Rights, *Fiscal Year 1989 Budget Request*, pp. 121-22 (hereafter cited as HHS/OCR FY 1989 Budget).

[26] U.S. Department of Health and Human Services, Office for Civil Rights, *Fiscal Year 1995 Budget Request*, p. 91 (hereafter cited as HHS/OCR FY 1995 Budget).

[27] *Ibid.* at 89.

[28] *See* HHS/OCR FY 1989 Budget, p. 123; HHS/OCR FY 1995 Budget, p. 90; HHS comments, p. 2.

projected 274 FTEs for FY 1996 (see table 7). The FY 1996 request reduces the FTE level by 21 from the FY 1995 appropriation.

OCR's resources have been reduced steadily, despite the fact that the number of complaints received continues to rise. The FY 1996 appropriation request indicates that OCR will allocate 130 FTEs, or 47 percent of the total staff, to complaint processing and increase the staff allocated to conducting reviews to 78 FTEs, or 28 percent of the total staff. Of those 78 FTEs though, only 37 will conduct compliance reviews. The compliance reviews conducted by OCR will be more limited in scope, and less time will be spent per case.[29] OCR also will reduce the amount of time spent by investigators on complaints. OCR projects that, based on streamlined case processing, by FY 1996 investigators will spend 25 percent fewer hours per case than in FY 1994.[30]

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[29] HHS/OCR FY 1996 Budget, p. 91.
[30] *Ibid.* at 89.

CHAPTER 3
Civil Rights Division, Department of Justice

Since its beginnings in 1957, the Civil Rights Division of the Department of Justice has grown enormously in terms of personnel and jurisdiction, and currently enforces a broad range of civil and criminal statutes and presidential executive orders. Although its initial focus was on voting and post-civil war criminal statutes, the Civil Rights Act of 1964[1] greatly expanded its authority. Under the act, the Division can receive, investigate, and litigate complaints of discrimination in places of public accommodation, in schools and colleges, in public facilities owned by State or local governments, in programs or activities receiving Federal financial assistance, and in employment. Since 1964, Congress and the President have given the Division additional authority to enforce the protection of civil rights and liberties.

Enforcement Authority

The Civil Rights Division has 10 subject-matter sections, an Office of Redress Administration, and an Administrative Management Section. The 10 units are: the Appellate Section, the Coordination and Review Section, the Civil Rights Prosecution Section, the Educational Opportunities Section, the Employment Litigation Section, the Housing and Civil Enforcement Section, the Special Litigation Section, the Disability Rights Section, the Voting Section and the Office of Special Counsel.

In the area of education, the Division focuses on the elimination of segregation in public schools and colleges and the eradication of discriminatory barriers that limit equal educational opportunities on account of race, color, religion, sex, or national origin. The Division investigates and litigates cases under Title IV of the Civil Rights Act of 1964,[2] Title IX of the Education Amendments of 1972,[3] the Equal Educational Opportunities Act of 1974,[4] and the Constitution. In addition, the Department of Education (DOE) may refer discrimination cases to the Division for enforcement against educational institutions, public or private, that receive Federal funds.

The Division enforces the following statutes prohibiting discrimination in employment: (1) Title VII of the Civil Rights Act of 1964,[5] as amended by the Equal Employment Opportunity Act of 1972;[6] (2) the Pregnancy Discrimination Act of 1978;[7]

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[1] 42 U.S.C. §§ 2000a et seq. (1988 & Supp. 1994).
[2] 42 U.S.C. §§ 2000c-2000c-9 (1988).
[3] 20 U.S.C. §§ 1681-1688 (1988).
[4] Pub. L. No. 93-380, Title II, 88 Stat. 484 (codified at 20 U.S.C. §§ 1701-1758 (1988)).
[5] 42 U.S.C. §§ 2000e-2000e-17 (1988 & Supp. 1994).
[6] 42 U.S.C. § 2000e-16 (1988 & Supp. 1994).
[7] Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k) (1988)).

and (3) the Civil Rights Act of 1991.[8] Pattern and practice enforcement actions against State and local governmental units comprise the bulk of the equal employment opportunity cases.

The Division also enforces Federal equal housing laws that proscribe discrimination in housing, the provision of credit, and in places of public accommodation based on race, color, religion, sex, disability, familial status, national origin, age or religion. The Division investigates complaints and litigates cases under Title VIII of the Civil Rights Act of 1968,[9] as amended by the Fair Housing Amendments Act of 1988,[10] Title II of the Civil Rights Act of 1964,[11] and the Equal Credit Opportunity Act.[12]

The Division protects the rights of racial and language minorities, overseas citizens, and voters who are blind, disabled, or illiterate by eliminating barriers to participation in the electoral process. The Division enforces the Voting Rights Act of 1965,[13] as amended, the Voting Accessibility for the Elderly and Handicapped Act,[14] the Uniformed and Overseas Citizens Absentee Voting Act,[15] and the National Voter Registration Act of 1993.[16] The Division brings lawsuits to remedy discrimination in elections conducted in all jurisdictions, and also has the authority to commence a civil action against any State or political subdivision that has imposed or applied a discriminatory device or procedure.[17]

The Division has criminal jurisdiction over violations of the Federal constitution and Federal statutes created in the days immediately following the Civil War.[18] In addition, Congress has included criminal provisions in some of its modern civil rights legislation containing largely civil remedies. Under these statutes protecting a variety of Federal rights (e.g., access to housing, voting, employment, education, public accommodations, and State-owned facilities), the Division may receive, investigate, and prosecute allegations of criminal violations.[19] The Division also prosecutes persons engaged in slavery or involuntary servitude.[20] Recently, most of the latter cases have involved migrant or undocumented workers and homeless persons.

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[8] 42 U.S.C. §§ 2000e et seq. (Supp. 1994).

[9] 42 U.S.C. §§ 3601-3619 (1988). In 1988, Congress officially designated Title VIII of the Civil Rights Act of 1968 the "Fair Housing Act," the name by which it was commonly known.

[10] 42 U.S.C. §§ 3601-3619, 3631 (1988).

[11] 42 U.S.C. §§ 2000a et seq. (1988).

[12] Pub. L. No. 93-495, 88 Stat. 1521 (codified at 15 U.S.C. §§ 1691-1691c (1988)).

[13] 42 U.S.C. §§ 1973-1973bb-1 (1988).

[14] Pub. L. No. 98-435, 98 Stat. 1678 (codified at 42 U.S.C. §§ 1973ee to 1973ee-6 (1988)).

[15] Pub. L. No. 99-410, 100 Stat. 924 (codified at 42 U.S.C. §§ 1973ff to 1973ff-6 (1988)).

[16] Pub. L. No 103-31, 107 Stat. 77 (codified at 42 U.S.C. §§ 1973gg-1 to 1973gg-10 (Supp. 1994)).

[17] 42 U.S.C. § 1973j(d), § 1973aa-2.

[18] 18 U.S.C. §§ 241, 242 (1988).

[19] *E.g.*, 18 U.S.C. § 245 (1988) (covers a variety of protected minority rights); 42 U.S.C. § 1973j(a)-(c) (1988) (certain voting rights involving race or color); 42 U.S.C. § 1973aa-3 (1988) (voting rights of language minorities); 42 U.S.C. § 1973bb(b) (1988) (right of 18-year-olds to vote); and 42 U.S.C. § 3631 (1988) (housing).

[20] 18 U.S.C. §§ 1581, 1584 (1988).

The Division's Disability Rights Section has enforcement responsibility for Titles II and III of the ADA, which prohibit discrimination based on disability in State and local government employment, public accommodations, commercial facilities, and the programs and services of State and local governments. Approximately 80,000 State and local government units and 6 million private enterprises are covered by these provisions.

Under Title II of the act, the Section initiates litigation upon referral from the designated Federal agencies that conduct investigations under Title II. Under Title III, the Section is responsible for investigating complaints of discrimination in public accommodations and commercial facilities. The Section can initiate litigation when it finds a pattern or practice of discrimination or an issue of general public importance.[21] The Section also is required to provide technical assistance to both covered entities and to the public. Finally, the Section certifies that State and local building codes meet the ADA accessibility requirements.

In addition to ADA enforcement, the Disability Rights Section has the responsibility to coordinate Federal enforcement of statutes that prohibit discrimination on the basis of disability in programs that receive Federal financial assistance.

The Special Litigation Section enforces the Civil Rights of Institutionalized Persons Act (CRIPA),[22] which authorizes the Division to institute civil actions to remedy violations of Federal rights of persons at certain State or local residential institutions.[23] Under the act, coverage includes residences for the developmentally disabled, juvenile facilities, nursing homes, and correctional facilities, such as prisons and jails.[24] The Federal rights protected at covered institutions include the quality of care, living conditions (e.g., adequacy of food, clothing, and shelter), recreational facilities, medical treatment, supervision, training programs, and institutional violence against residents. The Section also enforces Title III of the Civil Rights Act of 1964,[25] the Freedom of Access to Clinic Entrances Act,[26] and section 210401 of the Violent Crime Control and Law Enforcement Act of 1994,[27] and conducts Title II complaint investigations under the ADA.

In 1988, the Division established the Office of Redress Administration after passage of the Civil Liberties Act of 1988.[28] Under this act, the Attorney General was assigned responsibility for providing payments to eligible individuals of Japanese ancestry who were evacuated, relocated, or interned during World War II.

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[21] 42 U.S.C. § 12188(b)(2) (1988).
[22] 42 U.S.C. §§ 1997-1997j (1988).
[23] 42 U.S.C. § 1997a(a) (1988).
[24] *Id.* § 1997(1).
[25] 42 U.S.C. §§ 2000b et seq. (1988).
[26] Pub. L. No. 103-259, 108 Stat. 694 (codified at 18 U.S.C. § 248 (Supp. 1994)).
[27] Pub. L. No. 103-322, 108 Stat. 1796 (codified at 42 U.S.C. § 14141 (Supp. 1994)).
[28] 50 U.S.C. §§ 1989b to 1989b-8 (Supp. 1994).

In 1994, the Division assumed responsibility for enforcement of §274B of the Immigration and Nationality Act,[29] which makes it unlawful to discriminate in hiring, recruiting, or discharging an individual because of national origin or citizenship status. The Division also investigates and prosecutes charges of document abuse and retaliation under the act.

Finally, the Division has an Appellate Section, which handles all Division cases before the Supreme Court and the Courts of Appeals. This section also provides legal advice to other Federal agencies and prepares Division legislative initiatives and comments on legislative proposals.

Coordination Responsibilities

The Division's Coordination and Review Section is responsible for coordinating the civil rights enforcement activities of other Federal agencies. This authority derives both from statute and from Executive Order 12,250 of 1980.[30] The Section performs coordination duties under Title VI of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972.[31] Among other things, the Division is given the authority to: (a) develop and assist other agencies in developing guidelines and regulations for civil rights enforcement; (b) aid other agencies in meeting their responsibilities under antidiscrimination directives; (c) help resolve conflicts among agencies; (d) encourage cooperation among the agencies, including the drafting of memoranda of understanding; (e) evaluate regularly the civil rights laws and regulations with the goal of improving enforcement; (f) establish guidelines to govern agency record-keeping, reporting, and exchange of information; (g) create a program of cooperation between Federal agencies and State and local agencies; and (h) train agency employees to enforce civil rights proscriptions more efficiently and effectively.[32] The Executive Order imposes corresponding duties on the other Federal agencies to cooperate with the Attorney General and thus the Division in meeting its responsibilities under the order.[33]

Budget Analysis

Resources provided for the Civil Rights Division from FY 1981 to FY 1995, when considered in constant dollars, increased substantially (see figure 7). The FY 1996 appropriation request reflects an increase of 123 percent in constant dollars over the FY 1981 request. The resources appropriated by Congress increased 126 percent in constant

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[29] 8 U.S.C. § 1324b (1988).

[30] Exec. Order No. 12,250, 3 C.F.R. § 298 (1981), *reprinted in* 42 U.S.C. § 2000d-1 note (1988).

[31] 42 U.S.C. § 2000d-1 (§ 1-201(c)). The Section formerly performed coordination duties under § 504 of the Rehabilitation Act of 1973. A March 1995 reorganization transferred this responsibility to the Disability Rights Section.

[32] *Id.* §§ 1-202 to 1-207.

[33] *Id.* § 1-401.

FIGURE 7
DOJ/CRD Funding History, 1981-1996, in 1987 Dollars

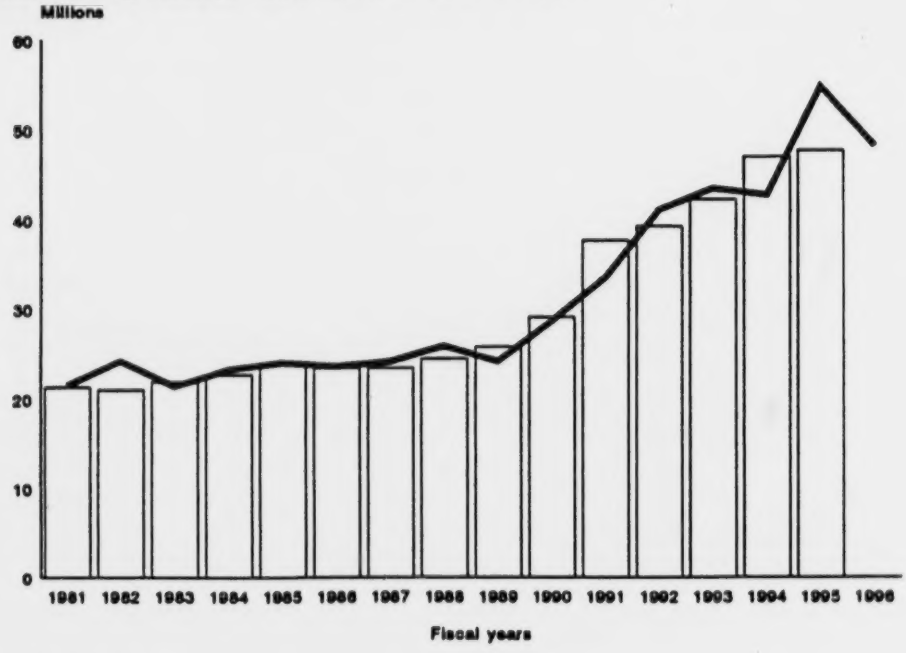

FIGURE 8
DOJ/CRD Full-Time Equivalent Summary, 1981-1996

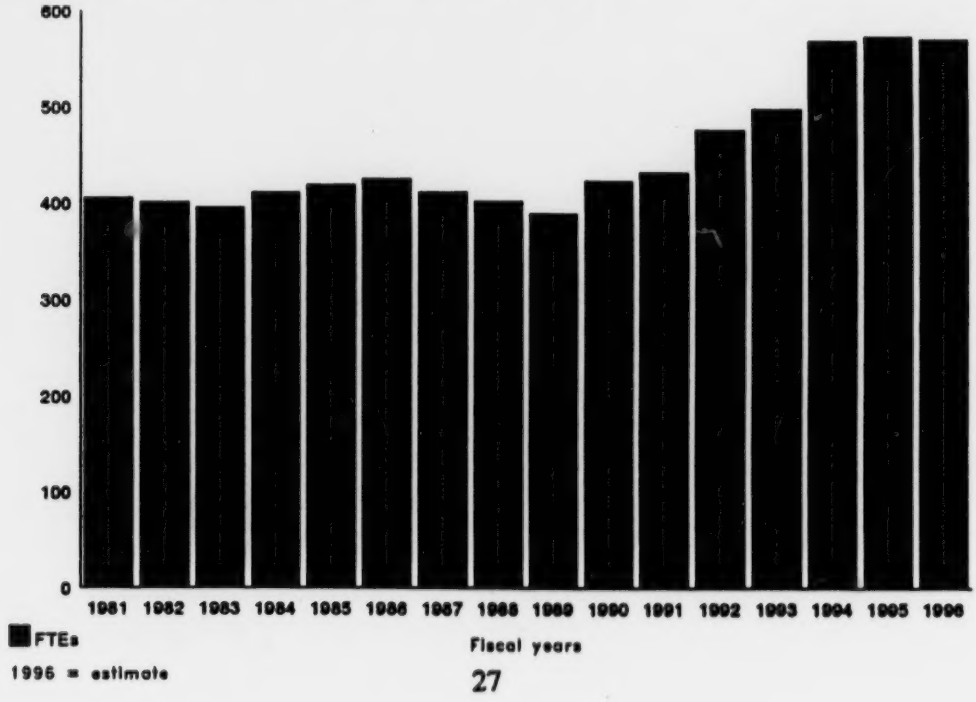

TABLE 10
DOJ/CRD Funding History
(In current dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	16,844,000	16,665,000	16,558,000
1982	20,279,000	17,603,000	17,530,000
1983	18,822,000	19,227,000	19,176,000
1984	21,290,000	20,700,000	20,669,000
1985	22,698,000	22,624,000	22,619,000
1986	22,999,000	22,810,000	22,301,000
1987	24,141,000	23,376,000	23,481,000
1988	26,752,000	25,263,000	25,835,000
1989	26,041,000	27,756,000	27,652,000
1990	32,180,000	32,688,000	32,442,000
1991	39,324,000	44,216,000	44,063,000
1992	49,829,000	47,581,000	47,404,000
1993	54,143,000	52,700,000	52,700,000
1994	54,536,000	59,956,000	59,851,000
1995	71,895,000	62,602,000	
1996	65,304,000		

TABLE 11
DOJ/CRD Funding History
(In millions of 1987 constant dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	21.5	21.3	21.2
1982	24.2	21.0	20.9
1983	21.4	21.9	21.9
1984	23.3	22.7	22.7
1985	24.0	23.9	23.9
1986	23.6	23.4	22.9
1987	24.1	23.4	23.5
1988	25.8	24.4	24.9
1989	24.1	25.7	25.6
1990	28.5	29.0	28.8
1991	33.4	37.5	37.4
1992	40.9	39.1	38.9
1993	43.3	42.1	42.1
1994	42.6	46.8	46.7
1995	54.6	47.5	
1996	48.0		

dollars from FY 1981 to FY 1995. Staffing for CRD also grew, rising 40 percent from FY 1981 to FY 1994 (see figure 8). At the same time, however, the Division's enforcement responsibilities were expanded enormously.

Funding for CRD grew slowly between FY 1981 and FY 1989. Resources requested rose by 12 percent in real spending power, and resources actually appropriated increased 21 percent in real funding from FY 1981 to FY 1989 (see tables 10 and 11). Despite this increase in spending power, staffing levels dropped from 405 FTEs in FY 1981 to 388 FTEs in FY 1989, an overall decline of 4.2 percent (see table 12).

From FY 1989 to FY 1993, the resources requested for CRD increased significantly compared to previous years, rising 80 percent in real spending power. Funding actually appropriated by Congress did not increase as greatly, but did rise by 64 percent in real terms over the FY 1989 level (see tables 10 and 11). With this improved funding, the Division was able to recover lost staff, which increased 28 percent, from 388 FTEs in FY 1989 to 497 FTEs in FY 1993 (see table 12). This staffing level represented an increase of 21 percent over the FY 1981 level.

The rise in resources provided for CRD has slowed between FY 1993 and the FY 1996 appropriation request. The request for FY 1996 represents a real increase in resources of 11 percent over the FY 1993 level. Similarly, resources appropriated by Congress rose by 13 percent from FY 1993 to FY 1995. If approved by Congress, the FY 1996 request would provide for 569 FTEs, which is an increase of 14.5 percent over the FY 1993 level.

TABLE 12
DOJ/CRD Staffing History

Year	Staffing level	Year	Staffing level
1981	405	1989	388
1982	400	1990	422
1983	395	1991	431
1984	410	1992	475
1985	418	1993	497
1986	424	1994	568
1987	410	1995*	572
1988	401	1996*	569

*Estimate

Since FY 1981, the general enforcement duties of the Division have increased substantially.[34] For example, the 1982 amendments to the Voting Rights Act expanded the Division's duty to bring lawsuits challenging election methods that result in vote dilution. These vote dilution cases are particularly complex, and require substantial time and analysis.[35] The Voting Section also experienced increased workloads following the 1990 census. The Division received 2,931 redistricting submissions for review following the 1980 census. In comparison, it received 5,445 submissions in 1992 as a result of the 1990 census.[36] Moreover, the new types of voting practices and procedures are factually more complex than those received a decade ago, and require the use of more staff, with higher levels of legal skills.[37] The review and analysis of the redistricting plans following the 1990 census required the attention of almost all the Section staff, and restricted its ability to undertake efforts in other areas.[38]

The work of the Voting Section continued to grow with passage of the Voting Rights Language Assistance Act of 1992,[39] which extended and expanded the Voting Rights Act to increase language minority coverage, and the National Voter Registration Act of 1993.[40] The Supreme Court decision in *Shaw v. Reno*,[41] also added to the Section's work, as it became involved in defending the constitutionality of redistricting plans from several States.

Another substantial increase in enforcement responsibility for the Civil Rights Division occurred with passage of the Fair Housing Amendments Act of 1988.[42] This act created a new administrative enforcement mechanism, which requires the Division to initiate litigation in two situations: (1) when a party to a HUD complaint elects to have the case tried in Federal court as opposed to the HUD administrative process; and (2) to seek prompt judicial relief when necessary while HUD completes its investigation and disposition of a complaint. The Division has no prosecutorial discretion with respect to these cases, which must be handled in addition to its traditional pattern and practice litigation. The new act also expanded the coverage of Title VIII to include disability and familial status, and authorized monetary damages and civil penalties in housing cases.

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[34] The Division experienced a significant increase in responsibility in 1980 also. Executive Order 12250 expanded its coordination and enforcement duties under Title VI and added authority under Title IX and section 504. Additionally, in 1980, Congress passed the Civil Rights of Institutionalized Persons Act. 42 U.S.C. §§ 1997-1997j.

[35] U.S. Department of Justice, Civil Rights Division, *Salaries and Expenses FY 1989*, p. 12 (hereafter cited as DOJ/CRD FY 1989 Budget).

[36] U.S. Department of Justice, Civil Rights Division, *Salaries and Expenses FY 1992*, p. 20 (hereafter cited as DOJ/CRD FY 1992 Budget).

[37] *Ibid.* at 16.

[38] *Ibid.* at 20.

[39] 42 U.S.C. §§ 1971 note, 1973aa-1a (Supp. 1994).

[40] 42 U.S.C. §§ 1973gg-1 to 1973gg-10 (Supp. 1994). The Voting Section is responsible for the Attorney General's civil enforcement of the NVRA under 42 U.S.C. § 1973gg-9(a).

[41] 113 S. Ct. 2816 (1993).

[42] 42 U.S.C. §§ 3601-3619, 3631 (1988).

These changes to the Fair Housing Act have increased both the number and complexity of cases in litigation (see table 13). As shown in table 13, from October 1, 1988, until March 12, 1989, the effective date of the Fair Housing Amendments Act, the program filed 6 housing cases. In contrast, from March 13 until the end of FY 1989, the Housing Section filed 21 cases.[43] By FY 1994, the number of new cases filed by the Section had reached 189 for that year, with 150 HUD election cases, and only 39 discretionary cases. The number of non-discretionary cases handled by the Section more than tripled between FY 1991 and FY 1994, rising from 39 to 150, thus reducing the Section's capacity to bring traditional pattern and practice cases.[44]

In order to handle this increased workload, the FY 1991 appropriation request sought an increase of 24 FTEs for the Housing Section, and Congress appropriated funds for 23 FTEs. In FY 1992, an additional 24 FTEs were requested, and Congress appropriated funds for 22. Thus by FY 1992, staffing in the Housing Section had nearly doubled from its FY 1990 level, rising from 39 to 75 FTEs (see table 14).

TABLE 13
DOJ/CRD Fair Housing Cases 1988-1996

Year	Cases filed	Year	Cases filed
10/1/88-3/12/89	6	1993	129
3/13/89-9/30/89	21	1994	189
1990	45	1995*	265
1991	95	1996*	285
1992	84		

*Estimate

TABLE 14
DOJ/CRD Staffing, Fair Housing Section, 1988-1996

Year	FTE level	Year	FTE level
1988	32	1993	77
1989	31	1994	89
1990	39	1995*	96
1991	54	1996*	95
1992	75		

*Estimate

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[43] DOJ/CRD FY 1991 Budget, p. 23.

[44] *See* U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report*, p. 219 (Sept. 1994) (hereafter cited as Fair Housing Report).

The focus on housing enforcement continued, with the announcement in 1992, of two new initiatives under the Fair Housing Amendments Act. The first provided for the creation and implementation of a new fair housing testing program, and the second directed the Division to take the lead in the investigation of discrimination in home mortgage loans. These initiatives have significantly increased the number of pattern and practice suits filed by the Section. In FY 1992, 18 pattern and practice cases were filed; by FY 1994, this number had risen to 39. Of the 39 cases filed in FY 1994, 15 were pursuant to the new testing and mortgage lending initiatives.[45] The staffing level for the Housing Section also continued to rise. By FY 1994, it had increased almost another 20 percent, from 75 FTEs in FY 1992 to 89 FTEs in FY 1994. The FY 1995 appropriation provides for a staffing level of 96 FTEs. The FY 1996 budget request reduces the FTE level by one from the FY 1995 appropriation. The staffing level for the Housing Section must be maintained in order to allow it to focus on more effective discretionary pattern and practice cases, and not be overwhelmed by the mandatory HUD cases, which normally represent only individual claims.[46]

The Division's obligation to prosecute civil rights violations was augmented in 1988, when it assumed responsibility for a statute that proscribes interference with persons in the exercise of their religious beliefs and the destruction of religious property.[47] The workload of the Civil Rights Prosecution Section has increased substantially since 1988. From 1989-1991, 107 hate crime cases were filed, while, in comparison, only 103 such cases were filed during the previous 12 years.[48] Additionally, passage of the Hate Crimes Statistics Act[49] in 1991 was expected to generate an increase in the number of cases referred to the FBI for investigation, thus increasing the number of cases prosecuted by the Division. Finally, and most recently, the Division was given responsibility for prosecuting cases under the Freedom of Access to Clinic Entrances Act of 1994.[50] Staffing for the Civil Rights Prosecution Section, however, has not kept pace with the increasing responsibilities. From FY 1988 until FY 1993, staffing dropped from 43 to 40 FTEs (see table 15). The FY 1994 budget provided an additional 9 FTEs, although the FY 1995 and FY 1996 appropriation requests estimate a reduction of 2 FTEs.

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[45] U.S. Department of Justice, Civil Rights Division, *Salaries and Expenses FY 1993*, p. 31 (hereafter cited as DOJ/CRD FY 1993 Budget).

[46] The Division already has begun delegating some of the nondiscretionary filing to the U.S. Attorneys Offices, to enable it to file more pattern and practice cases. DOJ/CRD FY 1996 Budget, p. 20.

[47] 18 U.S.C. § 247 (1988).

[48] U.S. Department of Justice, *Legal Activities 1992-1993*.

[49] Pub. L. No. 101-275, 104 Stat. 140 (codified at 28 U.S.C. § 534 note (Supp. 1994)).

[50] 18 U.S.C. § 248 (Supp. 1994).

TABLE 15
DOJ/CRD Staffing, Civil Rights Prosecution Section, 1988-1996

Year	FTE level	Year	FTE level
1988	43	1993	40
1989	41	1994	49
1990	40	1995*	47
1991	40	1996*	47
1992	40		

*Estimate

The Americans with Disabilities Act of 1990[51] significantly expanded the responsibilities of the Division, affecting the workloads of the Special Litigation Section, the Employment Section, the Coordination and Review Section, as well as the Disability Rights Section. Although initial funding was provided for implementation of the ADA, subsequent resource allocations have been insufficient to meet the increasing workload.

The Coordination and Review Section was hit especially hard. This Section initially handled all duties under the ADA, and for FY 1992, Congress appropriated 20 FTEs for the Section, and approved an additional 18 FTEs during FY 1992, bringing the total FTE level to 77. In August 1992, 40 FTEs were reprogrammed from the Coordination and Review Section, to establish the Public Access Section (now the Disability Rights Section). This left the Coordination and Review Section with fewer FTEs than before passage of the ADA, but it still retained responsibility for the administrative enforcement of Title II. The Section received 575 ADA complaints in FY 1992 and commenced investigation in 301 of those.[52] This number continued to increase substantially, doubling by FY 1994 when the Section received 1,414 complaints, initiating investigation in 692 of them.[53] Even though it received a substantial increase in duties, the staffing level in FY 1994 was 5 FTEs lower than the level in FY 1988 (see table 16). The FY 1995 appropriation cut one additional FTE from the Section. As a result, work by the Coordination and Review Section under Executive Order 12250 declined, as resources were redirected to ADA activities.[54]

[51] 42 U.S.C. §§ 12131-12134 (Supp. 1994).
[52] U.S. Department of Justice, Civil Rights Division, *Salaries and Expenses FY 1994*, p. 19 (hereafter cited as DOJ/CRD FY 1994 Budget).
[53] U.S. Department of Justice, Civil Rights Division, *Salaries and Expenses FY 1996*, p. 18 (hereafter cited as DOJ/CRD FY 1996 Budget).
[54] DOJ/CRD FY 1993 Budget, p. 25.

TABLE 16
DOJ/CRD Staffing, Coordination and Review Section, 1988-1996

Year	FTE level	Year	FTE level
1988	37	1993	34
1989	36	1994	32
1990	37	1995*	21
1991	39	1996*	22
1992	36		

* Estimate—staffing levels reduced as a result of a March 1995 Division reorganization.

TABLE 17
DOJ/CRD Staffing, Disability Rights Section, 1992-1996

Year	FTE level
1992	22
1993	40
1994	48
1995*	58
1996*	58

*Estimate

In order to alleviate this situation, the Division, in March 1995, instituted a reorganization. As part of this reorganization, all disability-related coordination and enforcement responsibilities were transferred from the Coordination and Review Section to the Disability Rights Section. This will allow the Coordination and Review Section to return its focus exclusively to enforcement of Executive Order 12,250. The reorganization, though, transferred ten staff members to the Disability Rights Section, leaving the Coordination and Review Section with one-third fewer staff than in FY 1981.

Staffing provided for the Disability Rights Section, which investigates complaints and initiates litigation under all three Titles of the ADA, and under Title II upon referral from other agencies, increased from 22 FTEs in FY 1992 to 48 FTEs in FY 1994 (see table 17).

The Disability Rights Section began investigations or compliance reviews in 1,168 cases in FY 1993, and commenced litigation in 5 cases.[55] By FY 1994, because of insufficient staff, the number of investigations and compliance reviews had dropped to 467. Consequently, the pending inventory rose from 980 in FY 1993 to 1,850 in FY

[55] U.S. Department of Justice, Civil Rights Division, *Salaries and Expenses FY 1995*, p. 24 (hereafter cited as DOJ/CRD FY 1995 Budget).

1994. In FY 1994, the Section commenced litigation in 15 cases.[56] For FY 1995, an additional 10 FTEs were requested for the Section. The congressional appropriation, however, reduced the funding by 12 FTEs, leaving the Section with 46 FTEs, 2 fewer than in FY 1994. The FY 1996 budget does not request any additional staff, and the Division estimates that the number of compliance reviews and investigations commenced will continue to fall, while the pending inventory will grow.[57] As noted above, a recent reorganization transferred 10 positions from the Coordination and Review Section to the Disability Rights Section, along with all disability-related coordination and enforcement responsibilities.

Although the Civil Rights Division rebounded from staffing reductions in the 1980s to a FTE level in FY 1994 that was 40 percent higher than the FY 1981 level, resources requested for FY 1996 will result in the first drop in staffing since FY 1989. In FY 1996, through FY 1998, the Division will be required to absorb reductions of 13 FTEs each year as a result of the Administration's streamlining initiatives. Because of the vast jurisdiction of the CRD, its overall workload is affected by nearly every expansion of civil rights protections. Given the significant increases in enforcement responsibility since 1988, it is critical that staffing levels for the CRD be maintained.

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[56] DOJ/CRD FY 1996 Budget, p. 24.
[57] *Ibid.*

CHAPTER 4
Equal Employment Opportunity Commission

Congress created the Equal Employment Opportunity Commission (EEOC) with the passage of Title VII of the Civil Rights Act of 1964.[1] The EEOC's jurisdiction covers all government employers, including Federal, State, and local entities and their subunits, private employers, employment agencies, educational institutions, and labor organizations. Its enforcement responsibilities arise from the Equal Pay Act of 1963,[2] Title VII of the Civil Rights Act of 1964,[3] as amended by the Equal Employment Opportunity Act of 1972,[4] the Age Discrimination in Employment Act of 1967,[5] the Americans with Disabilities Act of 1990,[6] and the Civil Rights Act of 1991.[7]

Enforcement Authority

Under the 1964 Civil Rights Act, EEOC originally only had power to investigate and conciliate complaints of employment discrimination based on race, color, religion, sex, and national origin. If conciliation efforts failed, EEOC's involvement in the matter terminated, and the charging party was obliged to file a private suit to obtain relief. EEOC's authority was augmented in 1972 with the enactment of the Equal Employment Opportunity Act, which gave EEOC power to file suit in Federal court at the conclusion of administrative procedures on a discrimination charge. The 1972 amendments also authorized EEOC to commence "pattern or practice" suits against private employers. Further, the act lowered the coverage threshold under Title VII for employers and unions from 25 to 15 employees or members.

EEOC's jurisdiction took a second quantum leap in 1978-1979 when the President transferred to the EEOC, from the Labor Department, enforcement authority under the Equal Pay Act of 1963 and the Age Discrimination in Employment Act of 1967, and from the former Civil Service Commission to the EEOC, enforcement duties regarding the employment practices of the Federal Government.[8]

Another major expansion of EEOC's responsibilities occurred with the passage of the Americans with Disabilities Act of 1990 (ADA) and the Civil Rights Act of 1991 (CRA of 1991). Title I of the ADA[9] took effect on July 26, 1992, and prohibits discrimination against qualified individuals with disabilities in job application procedures, hiring, firing,

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[1] 42 U.S.C. §§ 2000e-2000e-17 (1988 & Supp 1994).
[2] 29 U.S.C. § 206 (1988).
[3] 42 U.S.C. §§ 2000e-2000e-17 (1988 & Supp. 1994).
[4] 42 U.S.C. § 2000e-16 (Supp. 1994).
[5] 29 U.S.C. §§ 621-634 (1988).
[6] 42 U.S.C. §§ 12101-12213 (Supp. 1994).
[7] 42 U.S.C. §§ 2000e-2000e-17 (Supp. 1994).
[8] 42 U.S.C. § 2000e-4 note (1988).
[9] 42 U.S.C. §§ 12111-12117 (Supp. 1994).

advancement, compensation, fringe benefits, job training, and other terms, conditions, and privileges of employment.[10] The ADA provides coverage for some 43 million Americans and applies to about 660,000 entities.

The CRA of 1991 expanded the coverage and relief of Title VII and overturned several Supreme Court decisions that had limited the scope of Federal laws addressing employment discrimination. The CRA of 1991 broadened the jurisdiction of the EEOC by applying equal employment opportunity coverage to persons employed extraterritorially and to persons serving on the staffs of or appointed by State and local elected officials, and provided the EEOC administrative process as the means for resolving such claims.[11] The act also amended Title VII to expand the relief available to complainants, allowing for the recovery of compensatory and punitive damages.

Both the ADA and the CRA of 1991 impose obligations on EEOC with respect to the provision of technical assistance and outreach activities. The ADA requires EEOC to develop a technical assistance plan for entities covered by the ADA, about 660,000 employers, and for other Federal agencies. The CRA of 1991 requires EEOC to carry out educational and outreach activities and to establish a Technical Assistance Training Institute.

EEOC also has responsibility under Executive Order 12067 for developing and implementing policies to maximize effort, promote efficiency, and eliminate conflict and duplication among the various agencies in the Federal Government responsible for the implementation and enforcement of EEOC legislation. Further, EEOC has the authority "to issue, amend, or rescind suitable procedural regulations"[12] to implement Title VII.[13]

Finally, EEOC is responsible for the annual review and approval of the equal employment opportunity plans, including affirmative employment components, of each department and agency of the Federal Government.[14] EEOC reviews and evaluates the operations of all agency equal employment opportunity programs, and provides guidance to such agencies.[15]

Enforcement Procedures

EEOC enforces Federal prohibitions against employment discrimination through investigation, conciliation, litigation, coordination, education, and technical assistance.

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[10] *Id.* § 12112(a).

[11] The act made Title VII and the ADA applicable to persons employed extraterritorially. Approximately 2 million Americans work for United States businesses outside of the U.S. The Act made Title VII, ADEA and the ADA applicable to employees serving on the staffs of or appointed by State and local elected officials. Equal Employment Opportunity Commission, *Fiscal Year 1993 Budget Request*, p. 8 (hereafter cited as EEOC FY 1993 Budget).

[12] 42 U.S.C. § 2000e-12(a) (1988).

[13] 29 C.F.R. §§ 1601.1-1601.93 (1993).

[14] *See generally* 29 C.F.R. §§ 1613.201-1690.303 (1993).

[15] *See generally* 29 C.F.R. §§ 1690.101 et seq. (1993).

The Office of Program Operations oversees the field offices, which represent the center of EEOC enforcement activity. The field offices receive and investigate complaints of discrimination, and issue determinations of cause or no cause. If, after conducting its investigation, EEOC determines that there is reasonable cause to believe that discrimination has occurred, it will encourage the employer to eliminate voluntarily the alleged unlawful employment practice by "conference, conciliation and persuasion."[16] If EEOC's efforts to obtain voluntary compliance fail, it may bring a civil action against any respondent named in a charge,[17] and if successful, may seek a variety of remedies, including hiring, promotion, reinstatement, benefit restoration, backpay, front pay, damages, and other affirmative relief.

The Office of Federal Operations implements enforcement in the Federal sector. Complaints of discrimination are investigated initially within each agency's internal EEO process. The complainant can elect to have a hearing before an EEOC administrative judge, and the respective agency can then accept, reject, or modify the decision of the administrative judge. Finally, EEOC handles any appeals from final determinations of the Federal agencies upon request of the complainant.

Budget Analysis

Even though its workload has increased dramatically since FY 1981, funding and staffing provided for EEOC have declined steadily over that same period. In FY 1994, EEOC received 34,961 more complaints than it received in FY 1981, an increase of 62 percent. Conversely, in FY 1994, EEOC had 526 fewer FTEs than in 1981, a decrease of 16 percent. The FY 1995 appropriation was 2.1 percent below the FY 1981 appropriation in real spending power (see figures 9 and 10).

Overall, funding provided for EEOC between FY 1981 and FY 1989, in real spending power, fell 7.4 percent (see tables 18 and 19). The resources requested dropped sharply initially, by 9 percent in real terms between FY 1981 and FY 1982, but by FY 1989 had risen substantially, although still below the FY 1981 level. The resources appropriated by Congress, however, augmented the budget requests in the early 1980s, but by FY 1989 provided far less funding than requested. The early reversal of funding increases, compounded by the later congressional reductions, resulted in a reduced staffing level for EEOC. The FTE level in FY 1989 was 2,970, a reduction of 388 FTEs over the FY 1981 level (see table 20).

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[16] 29 C.F.R. § 1601.24(a) (1993).
[17] *Id.* § 1601.27.

FIGURE 9
EEOC Funding History, 1981-1996, in 1987 Dollars

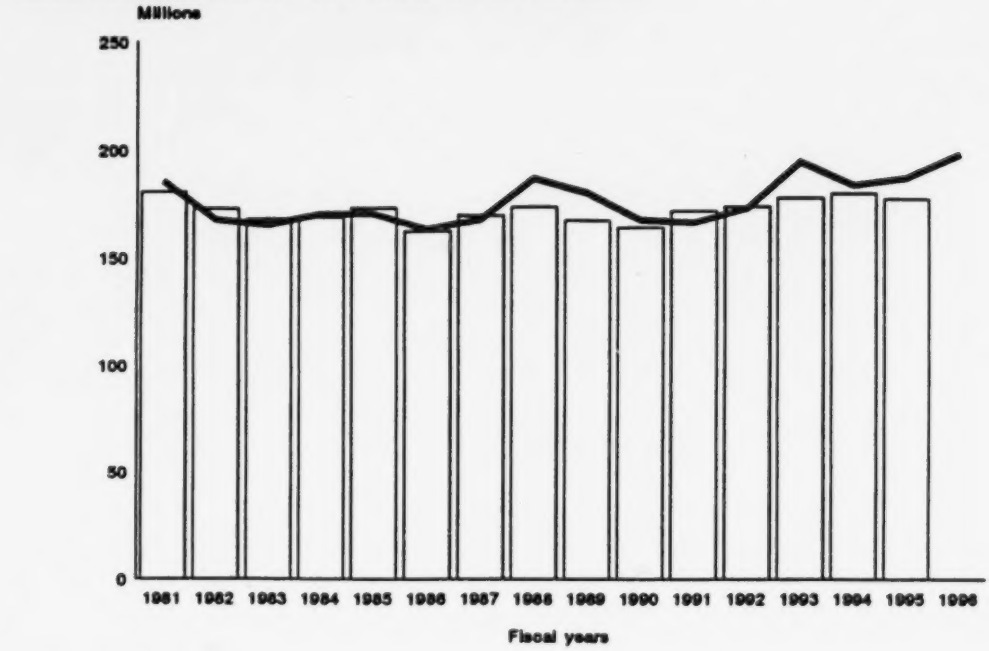


FIGURE 10
EEOC Full-Time Equivalent Summary, 1981-1996

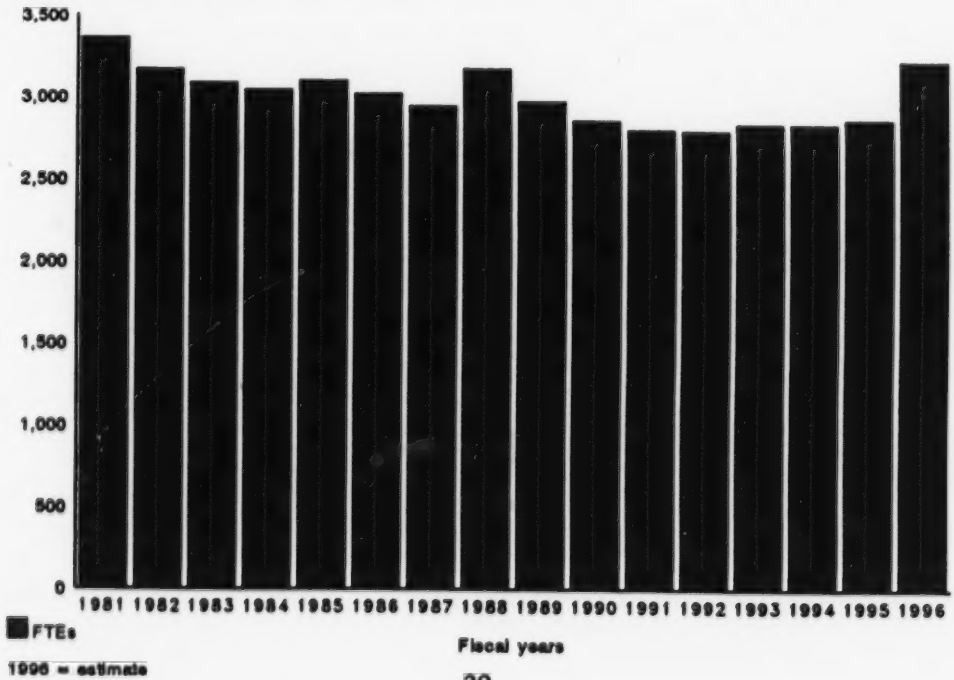


TABLE 18
EEOC Funding History
(In current dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	144,751,000	141,200,000	137,875,000
1982	140,389,000[1]	144,739,000	140,964,000
1983	144,937,000	147,421,000	146,286,000
1984	155,300,000	154,039,000	152,869,000
1985	161,155,000	163,655,000	163,476,000
1986	158,825,000	157,905,000	157,679,000
1987	167,691,000	169,529,000	169,730,000
1988	193,457,000	179,812,000	179,977,000
1989	194,624,000	180,712,000	180,477,000
1989	194,624,000	180,712,000	180,477,000
1990	188,700,000	184,926,000	184,539,000
1991	195,867,000	201,927,000	197,608,000
1992	210,271,000	211,271,000	212,152,000
1993	242,845,000	222,000,000	223,057,000
1994	234,845,000	230,000,000	229,793,000
1995	245,720,000	233,000,000	
1996	268,000,000		

[1] The initial Carter administration request of $160,000,000 was adjusted by the incoming adminstration.

TABLE 19
EEOC Funding History
(In millions of 1987 constant dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	185.2	180.6	176.4
1982	167.7	172.9	168.4
1983	165.2	168.0	166.7
1984	170.2	168.8	167.5
1985	170.5	173.1	173.0
1986	163.1	162.2	162.0
1987	167.7	169.5	169.7
1988	186.7	173.5	173.7
1989	180.0	167.1	166.9
1990	167.3	163.9	163.6
1991	166.2	171.4	167.7
1992	172.6	173.4	174.1
1993	194.1	177.4	178.3
1994	183.3	179.5	179.3
1995	186.5	176.8	
1996	197.1		

TABLE 20
EEOC Staffing History

Year	Requested	Actual	Year	Requested	Actual
1981	3,696	3,358	1989	3,198	2,970
1982	3,468[1]	3,166	1990	3,050	2,853
1983	3,327	3,084	1991	3,050	2,796
1984	3,125	3,044	1992	2,871	2,791
1985	3,125	3,097	1993	3,071	2,831
1986	2,976	3,017	1994	3,000	2,832
1987	3,125	2,941	1995	3,020	
1988	3,198	3,168	1996	3,219	

[1] The initial request for 3,740 FTEs was adjusted by the incoming administration.

TABLE 21
EEOC Private Sector Enforcement

Year	Complaints received	Complaints resolved	Pending end of year
1981	56,228	71,690	48,300
1982	54,145	67,052	35,020
1983	70,252	74,441	42,086
1984	71,197	55,034	36,903
1985	72,002	63,567	43,445
1986	68,822	63,446	50,767
1987	65,844	53,482	61,686
1988	63,778	70,749	53,780
1989	59,411	66,209	46,071
1990	62,135	67,415	41,987
1991	63,898	64,342	45,717
1992	70,302	68,366	52,856
1993	87,942	71,716	73,124
1994	91,189	71,563	96,945
1995*	93,925	67,969	127,159
1996*	99,139	67,696	160,190

* Estimate (without additional staff).

Although in private sector enforcement the number of complaints received and the number of complaints resolved from FY 1981 to FY 1989 remained relatively stable, no real progress was made in reducing the pending inventory of charges (see table 21). More important, the number of cases in which EEOC reached a conciliation agreement satisfactory to both parties dropped dramatically. As table 22 shows, in FY 1981, 32.4 percent of the total cases resolved were settled through some sort of merit resolution.

This number began to tumble, and by FY 1989 was at 16.8 percent. At the same time, the number of cases in which a no cause determination was issued began to rise just as strikingly, from 29.4 percent in FY 1981 to 54.2 percent in FY 1989.

In addition to reduced staffing, budgetary constraints also affected EEOC's ability to conduct effective litigation and investigations, by reducing resources available for travel, training, and litigation support. For example, in FY 1985, EEOC was spending on average $7,800 per case for litigation expenses. In the face of soaring litigation costs though, by FY 1990, EEOC was able to allocate only $4,375 per case for litigation.[18] Similarly, in FY 1985 EEOC spent $40 per case on travel. By FY 1990, this was down to $30 per case. Finally, in FY 1985, $114 per person was spent for staff training, but by FY 1990 this amount had dwindled to $17 per person.[19]

These resources provide the heart of an effective enforcement program. Staff must receive adequate training to remain knowledgeable about the current status of the laws they enforce and to maintain efficiency in processing and investigating complaints. Without sufficient resources for travel and litigation, investigators and attorneys are deprived of the basic tools for enforcement. These deficiencies also affect EEOC's ability to settle and conciliate cases. A strong enforcement program provides the incentive for parties to reach a satisfactory conciliation agreement, thus increasing the efficient resolution of charges.

TABLE 22
EEOC RESOLUTIONS 1981-1989

Year	Total resolutions	Merit resolutions		No cause decisions		Admin. closures	
1981	71,690	23,218	(32.4%)	21,097	(29.4%)	27,375	(38.2%)
1982	67,053	21,675	(32.3%)	23,462	(35.0%)	21,916	(32.7%)
1983	74,441	22,039	(29.6%)	30,570	(41.1%)	21,832	(29.3%)
1984	55,034	13,588	(24.7%)	25,675	(46.7%)	15,771	(28.7%)
1985	63,567	10,935	(17.2%)	35,138	(55.3%)	17,494	(25.8%)
1986	63,446	9,613	(15.2%)	37,014	(58.3%)	16,819	(27.5%)
1987	53,482	8,114	(15.2%)	29,578	(55.3%)	15,790	(29.5%)
1988	70,749	10,641	(15.0%)	35,148	(49.7%)	24,960	(35.3%)
1989	66,209	11,156	(16.8%)	35,896	(54.2%)	19,157	(28.9%)

[18] U.S. Congress, House, Subcommittee on the Departments of Commerce, Justice and State, the Judiciary and Related Agencies of the Committee on Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1992*, 102d Cong., 1st Sess., 1991, pp. 107-8 (testimony of Evan J. Kemp, Chairman, U.S. Equal Employment Opportunity Commission) (hereafter cited as EEOC FY 1992 Appropriations Hearing). Chairperson Kemp illustrated the paucity of such amounts, indicating that "the average cost of obtaining a trial transcript is $1500 and ... this does not include deposition transcripts and witness fees..." *Ibid.*

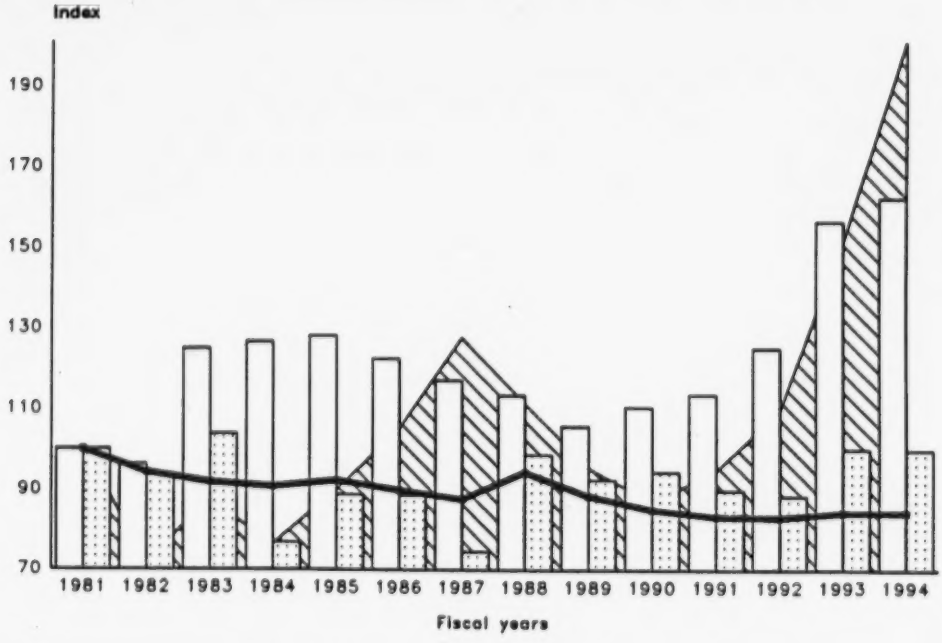
[19] *Ibid.* at 108, 118.

The resources requested for EEOC from FY 1989 to FY 1993, rose from $194,624,000 to $242,845,000, an increase of 8 percent in constant dollars (see tables 18 and 19). The resources actually appropriated by Congress rose almost as much, increasing 6 percent in real spending power from FY 1989 to FY 1993. The FTE level, however, continued to fall, from 2,970 in FY 1989 to 2,831 in FY 1993. The FY 1993 FTE level did represent an increase over the FY 1992 level, adding 40 FTEs.

As noted previously, the greatest increase in EEOC's enforcement responsibilities occurred in the early 1990s with passage of the Civil Rights Act of 1991 and the Americans with Disabilities Act of 1990. The workload also was affected by the implementation of revised regulations governing Federal sector complaint processing,[20] and external factors, such as the heightened public awareness of sexual harassment.

The resources provided for EEOC since the imposition of these additional duties have been inadequate to handle the rapidly increasing caseload (see figure 11).

FIGURE 11
EEOC, Staffing, Complaints Received, Resolved, and Backlogged, 1981-1994



1981 = 100; FTEs, 3,358; complaints received, 53,700; complaints resolved, 71,690; backog, 48,300.
Data do not include Federal sector complaints.

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[20] *See* 29 U.S.C. §§ 1614 et seq. (1993). The revised regulations were effective Oct. 1, 1992 and instituted mandatory time frames for Federal agencies to process EEO complaints. As agencies processed complaints more quickly, or did not process complaints within the required 180 days, the number of requests for hearings and appeals received by EEOC increased.

Congress provided no extra funding to EEOC in FY 1992 for implementation of the Civil Rights Act of 1991.[21] Fiscal year 1993 marked the first full year of enforcement of the new provisions of both the CRA and the ADA, and the FY 1993 budget requested an increase of $32.6 million over the FY 1992 enacted level of funding. Of that amount, Congress only appropriated an increase of $10.7 million over the FY 1992 level, $23 million less than requested. The funds provided in FY 1993 covered increases in salaries and benefits and mandatory expenses such as rent and postage, but did not provide for the requested 250 additional FTEs.[22]

Over this same period, the number of complaints received by EEOC has skyrocketed, increasing by 48 percent between FY 1989 and FY 1993. In FY 1993, receipts from the private sector increased 22 percent over FY 1992, and requests for hearings in the Federal sector increased 28.6 percent over FY 1992 (see tables 21 and 23).

Of the 87,942 receipts in FY 1993, 15,274 or 17 percent were charges filed under the ADA. Even as the number of cases resolved per investigator rose, from 79 in FY 1989 to 97.1 in FY 1993, (see table 24), the staffing level has been unable to handle the mounting workload. Consequently, the pending inventory of cases has increased by 59 percent between FY 1989 and FY 1993, and the average caseload per investigator more than doubled between FY 1990 and FY 1994, from 51.3 charges per investigator to 122 charges per investigator.[23] The pending inventory in Federal sector enforcement grew also, nearly doubling between FY 1989 and FY 1993.

The workload demands for EEOC have continued to grow since FY 1993. The pending inventory in private sector enforcement at the end of FY 1994 was 96,945 charges, an increase of 33 percent over the FY 1993 level. EEOC projects that it will receive 99,139 complaints from the private sector in FY 1996.[24] During FY 1994, the pending inventory in Federal enforcement also increased another 39 percent over the FY 1993 level. EEOC estimates that it will receive over 23,000 requests for hearings and appeals in FY 1996.[25]

The FY 1995 budget request sought $245,720,000 for EEOC, an increase of 1.7 percent in constant dollars over the FY 1994 request and an increase of 3.9 percent over

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[21] U.S. Congress, House, Subcommittee on the Departments of Commerce, Justice and State, the Judiciary and Related Agencies of the Committee on Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1993*, 102d Cong., 2d Sess., 1992, p. 621 (testimony of Evan J. Kemp, Chairman, U.S. Equal Employment Opportunity Commission) (hereafter cited as EEOC FY 1993 Appropriations Hearing).

[22] U.S. Congress, House, Subcommittee on the Departments of Commerce, Justice and State, the Judiciary and Related Agencies of the Committee on Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1994*, 103d Cong., 1st Sess., 1993, p. 180 (hereafter cited as EEOC FY 1994 Appropriations Hearing).

[23] Equal Employment Opportunity Commission, *Fiscal Year 1996 Budget Request*, p. 7 (hereafter cited as EEOC FY 1996 Budget).

[24] *Ibid.* at 60.

[25] *Ibid.* at 61-62.

TABLE 23
EEOC Federal Sector Enforcement 1990-1996

Year	Hearing receipts	Appeal receipts	Total pending inventory
1990	5,417	5,722	3,885
1991	5,773	5,305	4,613
1992	6,907	5,997	6,011
1993	8,882	6,361	6,872
1994	10,712	7,141	9,540
1995*	12,006	8,212	
1996*	13,807	9,444	

*Estimate

TABLE 24
EEOC Resolutions per Investigator 1989-1994

Year	Resolutions	Year	Resolutions
1989	79.0	1992	92.8
1990	88.4	1993	97.1
1991	88.5	1994	97.8

the FY 1994 appropriation. Congress, however, appropriated only $233 million for FY 1995, approximately $12 million less than requested, representing a decline of 1.5 percent in real spending power over the FY 1994 appropriation (see table 19). This level of funding will provide for 2,860 FTEs, an increase of 1 percent over the FY 1994 level.

The FY 1996 budget requests $268 million in resources for EEOC, an increase of $35 million over the FY 1995 appropriation and an additional 359 FTEs. EEOC's projections for its caseload without additional staff are extremely grave. For private sector enforcement, EEOC estimates that by FY 1996, the pending inventory of cases will rise to 160,190, an increase of 65 percent over the FY 1994 amount, and the months of pending inventory will grow to 28.2 months, compared to the already unacceptable FY 1994 level of 18.8 months.[26] Delays in processing undermine the fairness and effectiveness of the system and discourage people from coming forward and seeking redress for valid complaints of discrimination.

Failure by Congress to provide sufficient resources would exacerbate the current crisis at EEOC. Short of extraordinary gains in productivity or a major revamping of the complaint processing procedures, it seems likely that pending inventories, processing delays, and other performance indicators will continue to worsen. It also is doubtful that the agency will be able to devote any additional resources to such critical areas as systemic investigations and class action litigation. Furthermore, efforts to control the

[26] *Ibid.* at 60.

pending inventory by boosting quantitative measures of productivity or streamlining processes may come at the expense of the quality of services. In FY 1994 there were 97.8 resolutions per investigator, translating into about 2 days of investigation per charge. It is hard to imagine that any reduction in time spent per investigation could be an improvement in enforcement. Congress must provide EEOC with adequate staff to handle the increased enforcement responsibilities it has imposed.

CHAPTER 5
Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development

Since the establishment of the Department of Housing and Urban Development (HUD) in 1965,[1] equal opportunity in housing has been an important component of the agency's work. Under the direction of the Assistant Secretary for Equal Opportunity, the Office of Fair Housing and Equal Opportunity (FHEO) exercises a broad range of authority in matters relating to fair housing.

Enforcement Authority

FHEO's fair housing enforcement powers derive from several sources, listed here chronologically: (1) President Kennedy's Executive Order 11063 relating to equal opportunity in federally financed housing;[2] (2) Title VI of the Civil Rights Act of 1964;[3] (3) Title VIII of the Civil Rights Act of 1968;[4] (4) section 3 of the Housing and Urban Development Act of 1968;[5] (5) section 504 of the Rehabilitation Act of 1973;[6] (6) section 109 of Title I of the Housing and Community Development Act of 1974;[7] (7) the Age Discrimination Act of 1975;[8] (8) the Housing and Community Development Act of 1987;[9] (9) the Fair Housing Amendments Act of 1988;[10] (10) Title II of the Americans with Disabilities Act of 1990;[11] and (11) President Clinton's Executive Order 12892 providing for HUD coordination of certain fair housing efforts.[12]

The majority of FHEO's civil rights responsibilities lie in its authority to enforce Title VIII of the Civil Rights Act of 1968. Title VIII, as originally enacted, prohibited discrimination on the basis of race, color, religion, or national origin in the sale or rental, provision of brokerage services, or financing of housing, and placed the responsibility and authority for administering the act with the Secretary of HUD. The Housing and Community Development Act of 1974 added "sex" as a jurisdictional basis

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[1] Department of Housing and Urban Development Act, Pub. L. No. 89-174, 79 Stat. 667 (codified at 42 U.S.C. §§ 3531-3541 (1988)).

[2] Exec. Order No. 11,063, 3 C.F.R. § 652 (1962), *as amended by* Exec. Order No. 12,259, 3 C.F.R. § 2307 (1981), *reprinted in* 42 U.S.C. § 3608 (1988).

[3] 42 U.S.C. §§ 2000d-2000d-7 (1988).

[4] 42 U.S.C. §§ 3601-3619 (1988).

[5] Pub. L. No. 90-448, 82 Stat. 476 (codified at 12 U.S.C. § 1701u (Supp. 1994)).

[6] 29 U.S.C. § 794 (1988).

[7] Pub. L. No. 93-383, 88 Stat. 649 (codified at 42 U.S.C. § 5309 (1988)).

[8] 42 U.S.C. §§ 6101-6107 (1988).

[9] Pub. L. No. 100-242, 101 Stat. 1815 (1987).

[10] 42 U.S.C. §§ 3601-3619, 3631 (1988).

[11] 42 U.S.C. §§ 12131-12165 (Supp. 1994).

[12] Exec. Order No. 12892, 59 Fed. Reg. 2939 (1994).

to the Fair Housing Act.[13] Under Title VIII, as originally enacted, FHEO had limited authority to enforce the fair housing proscriptions. It could receive and investigate complaints from aggrieved persons alleging discriminatory housing practices, and seek voluntary compliance "by informal methods of conference, conciliation, or persuasion."[14] If such efforts proved unsuccessful, FHEO would notify the complainant, who could then file a civil action in any State or Federal court. FHEO itself could not bring any kind of enforcement action. With the passage of the Fair Housing Amendments Act of 1988, the enforcement responsibilities of FHEO expanded dramatically.[15] The amendments increased the coverage of Title VIII to include the prohibition of discrimination on the basis of disability and familial status, and enlarged the means of enforcement available to FHEO by adding administrative and judicial proceedings.

Pursuant to statutory authority[16] and presidential Executive orders,[17] FHEO also has the responsibility to ensure nondiscrimination without regard to race, color, religion, sex, disability, familial status, national origin, and age in programs and activities that receive Federal financial assistance. Current HUD regulations list over 35 statutory programs or activities to which, at least, its Title VI, section 504, and section 109 regulations apply.[18] The Civil Rights Restoration Act of 1987 expanded the reach of the Office's authority regarding equal opportunity in federally assisted programs and activities relating to housing and urban development.

Pursuant to the regulations of the Attorney General, HUD is the designated agency for the enforcement of certain aspects of Title II of the Americans with Disabilities Act, which requires all units of State and local government to make their services and programs available without regard to an individual's disability. The regulations assign to HUD the duty to implement this directive with respect to all "programs, services, and regulatory activities relating to state and local public housing, and housing assistance and referral."[19]

FHEO also is responsible for the enforcement of section 3 of the Housing and Urban Development Act of 1968,[20] which seeks to provide employment and other economic opportunities for the low-income residents and business concerns in the area in which HUD-financed projects are being planned or constructed. In 1992, Congress substantial-

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[13] 42 U.S.C. § 5309(a) (1988).

[14] 42 U.S.C. § 3610(a) (1988).

[15] The Fair Housing Amendments became effective on March 12, 1989.

[16] *See, e.g.*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-7 (1988); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1988); Section 109 of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309 (1988); and the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6107 (1988).

[17] *See, e.g.*, Exec. Order No. 11,063, 3 C.F.R. § 652 (1962), as amended by Exec. Order No. 12,259, 3 C.F.R. § 301 (1988), *reprinted in* 42 U.S.C. § 3608 (1988); Exec. Order No. 12,892, 59 Fed. Reg. 2939 (1994).

[18] *See* 24 C.F.R. Part 1, App. A; Part 8, App. A (1993).

[19] 28 C.F.R. § 35.190(b)(4) (1993).

[20] 12 U.S.C. § 1701u (Supp. 1994).

ly amended section 3, including the extension of coverage to "very low-income persons."[21] The provision applies broadly to all HUD "housing and community development programs" that receive Federal financial assistance.[22]

Finally, FHEO prepares rules and regulations to govern the enforcement of nondiscrimination requirements relating to housing and urban development, and performs coordination functions in the area of equal opportunity in housing and urban development. In January 1994, President Clinton issued Executive Order 12892,[23] which expanded HUD's directive to coordinate enforcement efforts among Federal agencies administering programs or activities relating to housing and urban development.

Enforcement Procedures

FHEO investigates complaints received from any person who claims to have been injured by a discriminatory housing practice or believes that an injury is about to occur. Those Title VIII complaints that fall within the jurisdiction of substantially equivalent State or local agencies are referred to those agencies for initial processing. During the investigatory period, FHEO engages in conciliation, and, at the end of the investigation, issues a determination indicating whether reasonable cause exists to believe that discrimination has occurred. If reasonable cause is found, any of the parties may elect to have the matter resolved in Federal court through a HUD referral to the Civil Rights Division at the Department of Justice. If no party opts for a judicial determination, then the charge is resolved through the HUD administrative process which could result in awarding actual damages, equitable relief, a civil penalty, costs, and attorney fees.[24]

FHEO also conducts investigations and compliance reviews to enforce the provisions of Title VI, section 504, the Age Discrimination Act of 1975, section 109 of Title I of the Housing and Community Development Act of 1974, section 3 of the Housing and Urban Development Act of 1968, the Americans with Disabilities Act, and Executive Order 11063. If a violation is found, HUD may refuse to approve an application for financial assistance, or if the proceedings involve a current recipient, HUD may terminate, refuse to continue funding, or take other appropriate measures.

FHIP and FHAP

FHEO's fair housing duties also include the administration of two funding assistance programs, the Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP). FHAP provides financial assistance to supplement the enforcement activities of State and local enforcement agencies that have been certified as providing

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[21] *Id.* § 1701u(b).
[22] *Id.*
[23] Exec. Order No. 12892, 59 Fed. Reg. 2939 (1994).
[24] *See* 42 U.S.C. §§ 3601-3612 (Supp. 1994).

rights, remedies, procedures, and the availability of judicial review that are substantially equivalent to that provided in the Fair Housing Act.[25]

Administration of FHAP requires FHEO to make determinations as to whether State and local agencies are substantially equivalent. This often involves onsite review and evaluation by FHEO staff. Passage of the Fair Housing Amendments Act of 1988 affected the status of FHAP agencies, which were given until September 1992 to bring their laws and procedures into conformance with the Fair Housing Act. To assist agencies with certification, FHEO staff provided training, issued written guidelines, participated at meetings, and reviewed proposed legislation. Many agencies, however, lost their certification. In 1990, approximately 125 agencies were certified as substantially equivalent. The number of agencies qualifying in 1993 was 52.

The Fair Housing Office also administers the Fair Housing Initiatives Program (FHIP). FHIP was authorized by the Housing and Community Development Act of 1987,[26] which provided for the execution of grants, contracts, or cooperative agreements with State or local government agencies, public or private nonprofit organizations, institutions, or other entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices.[27] Initiative funding is provided in four distinct areas: administrative enforcement, education and outreach, private enforcement, and fair housing organization.[28] The Housing and Community Development Act of 1992[29] expanded the provisions of FHIP, adding initiatives to: establish fair housing organizations in unserved and underserved areas and build the capacity of existing fair housing organizations; establish a national media campaign for dissemination of fair housing information; and create an annual National Fair Housing Month program component.

Budget Analysis

Overall, the FY 1996 budget request for FHEO reflects a 44 percent increase, in real terms, over the FY 1981 request, and the FY 1995 appropriation a 36 percent increase over the FY 1981 appropriation (see figure 12). Similarly, the FY 1996 request would provide 102 more FTEs than available in FY 1981, an increase of 16 percent (see figure 13).

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[25] Agencies receive capacity building funds in their first and second years of participation in the program. After the second year, they become "contributions agencies" and are eligible to receive case processing and administrative cost assistance. *See* 24 C.F.R. §§111.101-111.123 (1993).

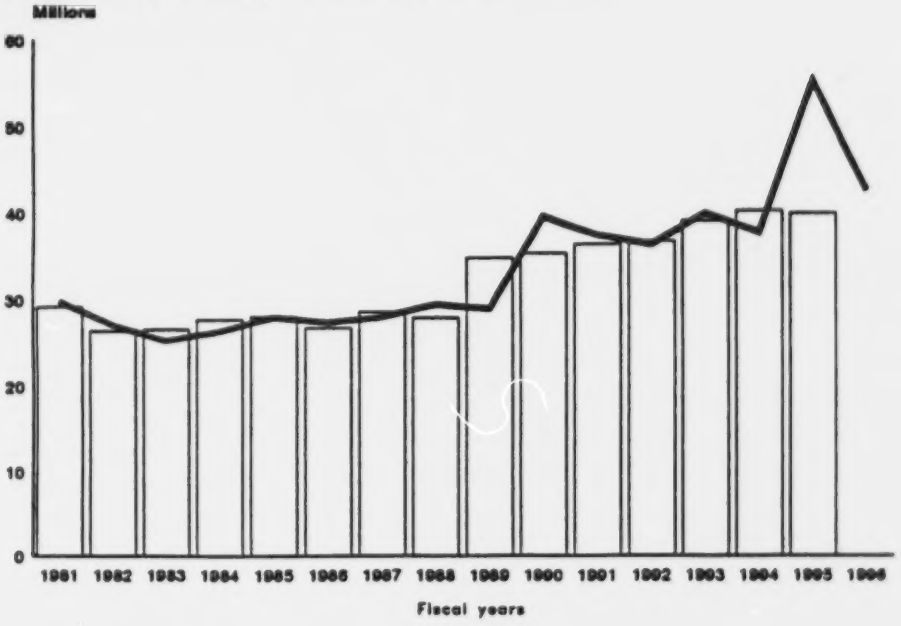
[26] 42 U.S.C. § 3616a (Supp. 1994).

[27] This authorizing legislation was enacted in February 1988, and funds were first appropriated in the FY 1989 Appropriations Act.

[28] *See* 24 C.F.R. §§ 125.201-125.403 (1993).

[29] Pub. L. No. 102-550, § 905b, 106 Stat. 3672 (codified at 42 U.S.C. § 3616a (Supp. 1994)).

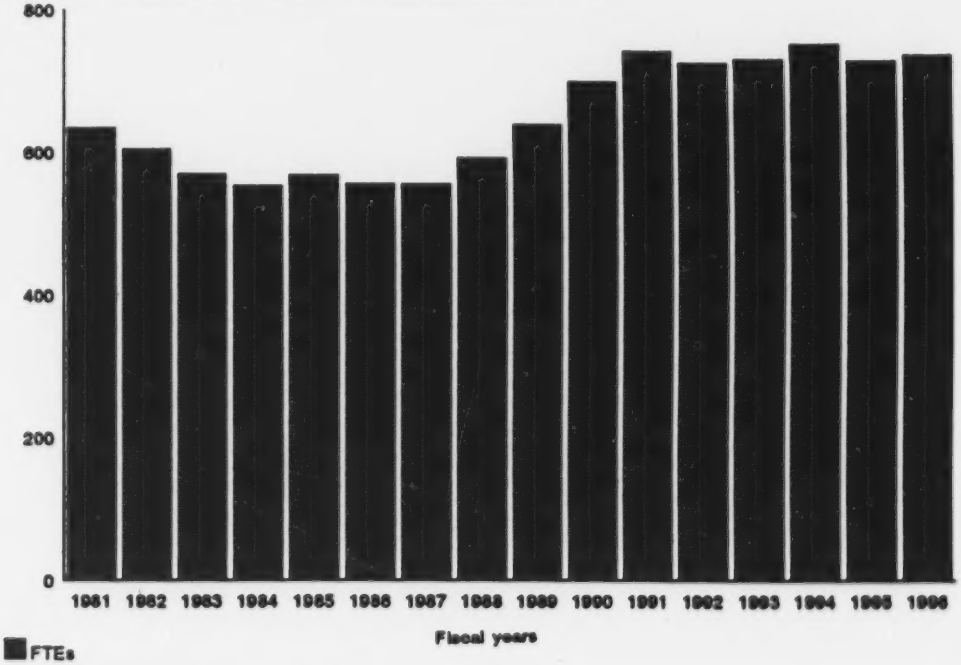
FIGURE 12
HUD/FHEO Funding* History, 1981-1996, in 1987 Dollars



— Request ☐ Appropriation

* Salaries and expenses, headquarters and field offices; does not include FHIP or FHAP funding.

FIGURE 13
HUD/FHEO* Full-Time Equivalent Summary, 1981-1996



■ FTEs

* Headquarters and field.

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The FY 1981 budget request sought substantial increases for FHEO, requesting a total FTE level of 666, which represented an additional 93 FTEs and $3.8 million. These resources were needed to handle an increased workload under Title VIII and to continue a strategy begun in 1979 to process complaints more effectively, focus on systemic discrimination and increase monitoring and technical assistance.[30] Actual staffing during FY 1981, though, was affected by newly imposed hiring limitations. The projected FTE level was reduced, and actual FTE usage during FY 1981 was 633. The initial FY 1982 budget requested $24 million and 669 FTEs, but was revised to $22.6 million and 631 FTEs. The actual FTE level for FY 1982 was 603. Overall, resources requested from FY 1981 to FY 1989 increased from $23 million to $31 million, but adjusting for inflation, real spending power fell by 2.4 percent during this period (see tables 25 and 26).

The staffing level for FHEO overall fell 1.3 percent from FY 1981 to FY 1989. After reaching a low of 545 FTEs in FY 1987, staffing rebounded to 625 FTEs by FY 1989 (see table 27).

TABLE 25
HUD/FHEO Funding History (Salaries and Expenses)[1]
(In current dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	23,195,000	22,752,000	21,062,000
1982	22,637,000	21,983,000	22,288,000
1983	22,132,000	23,262,000	22,417,000
1984	23,975,000	25,175,000	23,499,000
1985	26,309,000	26,352,000	25,694,000
1986	26,521,000	25,918,000	25,963,000
1987	27,768,000	28,398,000	25,898,000
1988	30,253,000	28,736,000	29,193,000
1989	31,003,000	37,392,000	32,620,000
1990	44,295,000	39,619,000	37,262,000
1991	43,821,000	42,579,000	41,224,000
1992	43,960,000	44,775,000	44,665,000
1993	49,632,000	48,525,000	47,074,000
1994	47,964,000	51,080,000	49,380,000
1995	72,146,000	52,228,000	
1996	57,337,000		

[1] HUD receives a lump sum appropriation, of which FHEO receives an allotment for salaries and expenses.

[30] U.S. Department of Housing and Urban Development, Fair Housing and Equal Opportunity, *FY 1981 Salaries and Expenses*, p. 4 (hereafter Cited as HUD/FHEO FY 1981 Budget).

TABLE 26
HUD/FHEO Funding History (Salaries and Expenses)
(In 1987 millions of constant dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	29.4	29.1	27.0
1982	27.0	26.3	26.6
1983	25.2	26.5	25.5
1984	26.3	27.6	25.8
1985	27.8	27.9	27.2
1986	27.2	26.6	26.7
1987	27.8	28.4	25.9
1988	29.2	27.7	28.2
1989	28.7	34.6	30.2
1990	39.3	35.1	33.0
1991	37.2	36.1	35.0
1992	36.1	36.8	36.7
1993	39.7	38.8	37.6
1994	37.4	39.9	38.5
1995	54.8	39.6	
1996	42.2		

TABLE 27
HUD/FHEO Staffing History[1]

Year	FTE level	Year	FTE level
1981	633	1989	625
1982	603	1990	697
1983	568	1991	740
1984	552	1992	724
1985	561	1993	729
1986	550	1994	750
1987	545	1995*	727
1988	584	1996*	735

[1] Beginning in FY 1983, HUD started using FTEs as a unit of measurement in staffing analysis, rather than staff years.
FTE = full-time equivalent positions and part-time and temporary positions.
Staff years = FTE and overtime and terminal leave.
* Estimate

TABLE 28
HUD/FHEO Title VIII Complaint History

Year	Complaints received	Complaints closed
1981	4,209	2,864
1982	5,112	2,326
1983	4,551*	4,665
1984	4,642*	4,642
1985	4,882*	4,112
1986	4,157*	4,155
1987	4,200*	4,191
1988	4,658*	4,682
1989	6,275	4,943
1990	7,746	7,063
1991	8,487	8,487
1992	9,153	9,153
1993	10,068	8,449
1994	9,542	7,634
1995*	11,000	11,000
1996*	11,000	11,000

* Estimate

The number of Title VIII complaints received and processed during this period remained relatively stable (see table 28), but because of reduced staff, the number of compliance reviews conducted under Title VI, section 504, section 109, and the Age Discrimination Act declined steadily. In FY 1981, 549 compliance reviews were conducted; by FY 1988, this number had fallen to 80.[31]

The most substantial increase in the workload for FHEO occurred with passage of the Fair Housing Amendments Act of 1988. The initial implementation of FHAA was funded by an approved reprogramming of 28 FTEs and $2.8 million, and a supplement of $2 million and 18 FTEs.[32] In FY 1990, an additional $6.9 million and 108 FTEs were requested to fund implementation of FHAA and to increase enforcement in other program areas. The actual appropriation in FY 1990, however, was nearly $5 million less than requested and supported 55 fewer FTEs. Between FY 1991 and FY 1994, the

[31] *See* U.S. Department of Housing and Urban Development, Fair Housing and Equal Opportunity, *FY 1983 Salaries and Expenses*, p. 17 (hereafter cited as HUD/FHEO FY 1983 Budget); HUD/FHEO FY 1990 Budget, p. 23.

[32] U.S. Department of Housing and Urban Development, Fair Housing and Equal Opportunity, *FY 1990 Salaries and Expenses*, p. 2. (hereafter cited as HUD/FHEO FY 1990 Budget). Actual obligations for FY 1989 were lower than originally projected due to the delay in the supplemental appropriation for implementation of FHAA. U.S. Department of Housing and Urban Development, Fair Housing and Equal Opportunity, *FY 1991 Salaries and Expenses*, p. 2. (hereafter cited as HUD/FHEO FY 1991 Budget).

TABLE 29
HUD/FHEO Staffing 1988-1994

Year	Field staff	HQ staff	Year	Field staff	HQ staff
1988	456	134	1992	566	158
1989	491	145	1993	583	146
1990	545	152	1994	603	147
1991	582	158			

TABLE 30
HUD/FHEO Program Compliance: Complaints 1987-1996[1]

Year	Complaints	Year	Complaints
1987	124	1992	551
1988	225	1993	432
1989	259	1994	603
1990	380	1995*	830
1991	384	1996*	867

[1] Data for 1987 to 1993 are complaints processed. Data for 1994 to 1996 are complaints received.
* Estimate

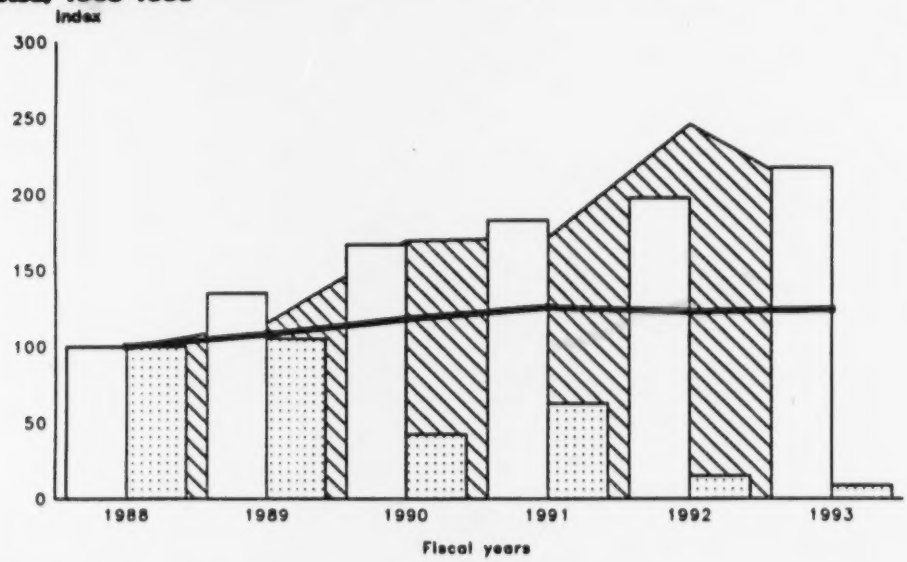
resources requested increased .5 percent in real terms, and the amount actually appropriated increased 10.5 percent (see tables 25 and 26).

From FY 1988 to FY 1993, the number of complaints received under Title VIII increased 116 percent, from 4,658 to 10,068. Complaint receipts dropped slightly in 1994, but are expected to rise to 11,000 in FY 1995 and FY 1996 (see table 28). Over that same period, FHEO staffing increased by 27 percent, rising from 584 FTEs in FY 1988 to 750 FTEs in FY 1994 (see table 27). The majority of FHEO staff is located in the field offices, and the FTE level for the field rose from 456 in FY 1988 to 603 in FY 1994, an increase of 32 percent. Staffing in headquarters has remained relatively stable (see table 29).

In addition to the rising Title VIII complaint workload, the Civil Rights Restoration Act of 1987 had a significant impact on the workload of FHEO's program compliance staff, which conduct investigations and compliance reviews under Title VI, section 504, section 109, section 3, the Age Discrimination Act, and after 1992, the ADA. In FY 1987, FHEO processed 124 complaints under those statutes. By FY 1993, this number had risen to 432, an increase of 248 percent (see table 30).

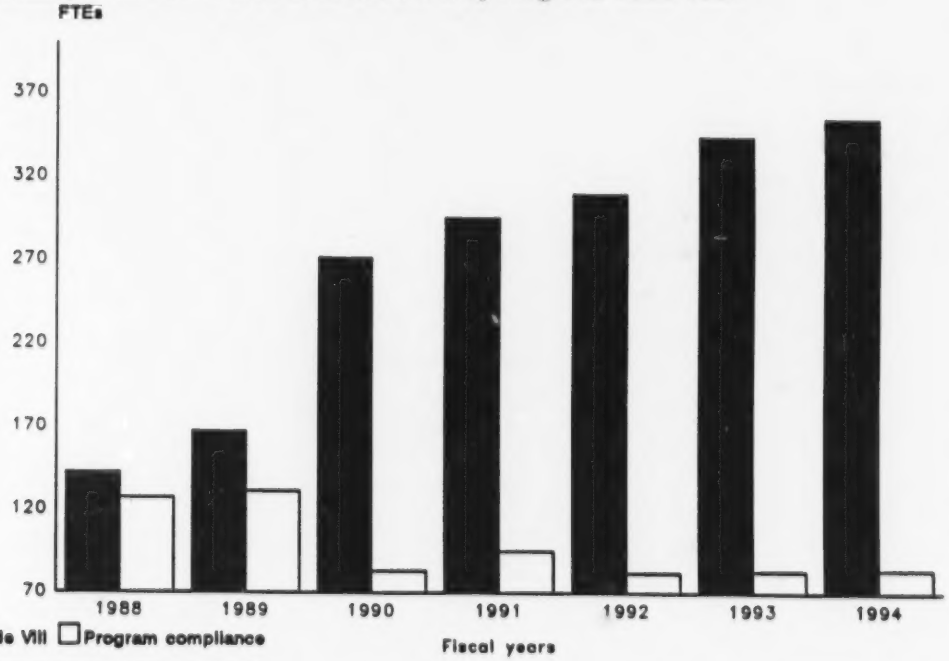
During this period of rising program compliance complaints, resources were focused on handling the Title VIII caseload, and staffing directed to program compliance declined from 127 FTEs in FY 1988 to 84 FTEs in FY 1994, while staff responsible for Title VIII enforcement rose from 142 FTEs to 354 FTEs (see figures 14 and 15 and table 31).

FIGURE 14
HUD/FHEO Staffing, Complaints Processed, and Compliance Reviews Completed, 1988-1993



Complaints fall into two categories: Title VIII of the Fair Housing Act and Program Compliance. Program compliance complaints include Title VI, sec. 504, sec. 109, ADA, and Age Discrimination Act. 1988=100; FTEs, 590; Title VIII, 4,658; other complaints, 225; compliance reviews completed, 80.

FIGURE 15
HUD/FHEO, Distribution of Field Office FTEs by Program, 1988-1994



Program compliance covers Title VI, sec. 504, sec. 109, ADA, & Age Discrimination Act.

TABLE 31
HUD/FHEO Field Staffing 1988-1994

Year	Fair housing enforcement	Program compliance
1988	142	127
1989	167	131
1990	271	83
1991	295	95
1992	309	82
1993	343	83
1994	354	84

TABLE 32
HUD/FHEO Program Compliance Reviews 1987-1996[1]

Year	Compliance reviews	Year	Compliance reviews
1987	84	1992	12
1988	80	1993	7
1989	84	1994	57
1990	34	1995*	90
1991	50	1996*	93

[1] Data for 1987 to 1993 is compliance reviews completed. Data for 1994 to 1996 is compliance reviews started.
* Estimate

Because the reduced program compliance staff was responsible for handling the substantial increase in complaints, the number of compliance reviews conducted continued to fall steadily (see table 32). In FY 1989, 84 compliance reviews were conducted; by FY 1993 this number had fallen to 7. The number of compliance reviews initiated rose in FY 1994 to 57, and is projected to increase again in FY 1995 and FY 1996.

The FY 1995 appropriation request sought $72 million in resources for FHEO and a staffing level of 783 FTEs. This represented an increase of $20 million and 33 FTEs over the FY 1994 level. The amount actually appropriated by Congress for FY 1995, though, was $52.2 million, $20 million less than requested and a 1 percent reduction in real spending power (see table 26). As a result, the FTE level for FY 1995 is expected to fall to 727, which is below the FY 1991 FTE level.

The FY 1996 budget reflects an increase of $5 million and 8 FTEs over the FY 1995 appropriation, but still falls 23 percent, in real terms, below the FY 1995 budget request. Even with an estimated FTE level of 735 for FY 1996, this is well below the FY 1994 level of 750 FTEs. Staffing levels are reduced, even though FHEO predicts that in FY

TABLE 33
FAIR HOUSING ASSISTANCE PROGRAM (FHAP) FUNDING HISTORY
(In current dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	5,700,000	5,700,000	2,137,000
1982	5,700,000	5,700,000	7,371,000
1983	5,700,000	5,700,000	7,283,000
1984	4,700,000	4,700,000	6,436,000
1985	6,700,000	6,700,000	4,750,000
1986	5,000,000	6,341,000	5,620,000
1987	5,000,000	6,341,000	9,218,000
1988	6,400,000	4,800,000	6,098,000
1989	5,000,000	5,000,000	4,676,000
1990	6,753,000	6,571,000	6,235,000
1991	6,591,000	6,600,000	7,547,000
1992	5,000,000	5,000,000	964,000
1993	4,750,000	4,400,000	5,341,000
1994	4,519,000	4,519,000	6,979,000
1995	7,375,000	7,375,000	
1996	15,000,000		

1996, Title VIII complaints will be 15 percent higher than the FY 1994 level; section 504 complaints will be 62 percent higher than the FY 1994 level; section 3 complaints will be 30 percent higher than the FY 1994 level; ADA complaints will be 114 percent higher than the FY 1994 level; and FHEO will initiate 33 more compliance reviews than in FY 1994, an increase of 58 percent.

The level of funding provided for the Fair Housing Assistance Program (FHAP) declined in real spending power throughout the 1980s (see tables 33 and 34). The amount requested and appropriated for FY 1981 was $5.7 million, compared to $5 million in FY 1989, representing a reduction of 31.5 percent in real funding.

TABLE 34
FAIR HOUSING ASSISTANCE PROGRAM (FHAP) FUNDING HISTORY
(In millions of 1987 constant dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	7.3	7.3	2.7
1982	6.8	6.0	8.8
1983	6.5	6.5	8.3
1984	5.2	5.2	7.1
1985	7.1	7.1	5.0
1986	5.1	6.5	5.8
1987	5.0	6.3	9.2
1988	6.2	4.6	5.9
1989	4.6	4.6	4.3
1990	6.0	5.8	5.5
1991	5.6	5.6	6.4
1992	4.1	4.1	0.8
1993	3.8	3.5	4.3
1994	3.5	3.5	5.4
1995	5.6	5.6	
1996	11.0		

Over this same period though, as the number of certified State and local agencies increased, there was a dramatic rise in the number of cases referred to FHAP agencies for processing. In FY 1980, 410 cases were referred to FHAP agencies for processing. By FY 1986, this number had risen to 2,874, an increase of 601 percent.[33] Generally speaking, the FHAP agencies process about 40 percent of all Title VIII complaints received. Funding requested for the FHAP program did not rise significantly until the FY 1996 budget request. The budget presented by the administration for FY 1996 requests $15 million in funding for the FHAP program. This is the first appropriation request higher, in constant dollars, than the FY 1981 request.

As noted earlier, the Housing and Community Development Act of 1987 authorized creation of the Fair Housing Initiatives Program (FHIP), although resources were not appropriated for the program until 1989, and no funds were actually obligated until FY 1990 (see tables 35 and 36). The Housing and Community Development Act of 1992 expanded the provisions of the FHIP program. Funding commitments on the part of the administration and Congress have been strong: for FY 1994, the administration requested $17 million and Congress appropriated $20.5 million. Similarly, for FY 1995,

[33] U.S. Department of Housing and Urban Development, Fair Housing and Equal Opportunity, *Fair Housing Assistance Program FY 1988*, p. 6 (hereafter cited as HUD/FHEO FY 1988 FHAP Budget).

$26 million was requested and appropriated, and for FY 1996, the Clinton administration requests $30 million for the program.

TABLE 35
Fair Housing Initiatives Program (FHIP) Funding History
(In current dollars)

Year	President's request	Congressional appropriation	Actual obligations
1986	10,000,000	—	—
1987	7,000,000	—	—
1988	3,600,000	—	—
1989	5,000,000	5,000,000	—
1990	6,000,000	5,839,000	5,076,000
1991	5,592,000	5,810,000	5,611,000
1992	8,000,000	8,000,000	5,905,000
1993	7,600,000	7,901,000	7,900,000
1994	16,900,000	20,481,000	27,886,000
1995	26,000,000	26,000,000	
1996	30,000,000		

TABLE 36
Fair Housing Initiatives Program (FHIP) Funding History
(In millions of 1987 constant dollars)

Year	President's request	Congressional appropriation	Actual obligations
1986	10.3	—	—
1987	7.0	—	—
1988	3.5	—	—
1989	4.6	4.6	—
1990	5.3	5.2	4.5
1991	4.7	4.9	4.8
1992	6.6	6.6	4.8
1993	6.1	6.3	6.3
1994	13.2	16.0	21.8
1995	19.7	19.7	
1996	22.1		

CHAPTER 6
Office of Federal Contract Compliance Programs, Department of Labor

In 1965, President Johnson issued Executive Order 11246,[1] directing Federal departments and agencies to include nondiscrimination and affirmative action requirements in all Federal contracts, including federally assisted construction contracts. Pursuant to that direction, the Secretary of Labor created the Office of Federal Contract Compliance as an organizational unit in the Department of Labor.[2] The Office had two antecedents: a fair employment practices committee that President Roosevelt created on the eve of the Second World War and the President's Committee on Equal Employment Opportunity established in 1961,[3] which Executive Order 11246 abolished. Initially, enforcement was carried out by the various contracting agencies, under the oversight of OFCCP. In 1978 President Carter consolidated enforcement of the entire Federal contract compliance program in the Department of Labor, transferring the compliance activities of 11 agencies to OFCCP.[4] The obligations of the Office under Executive Order 11246 are extensive. In FY 1991, for example, the Federal Government contracted with about 250,000 suppliers employing over 28 million workers under contracts worth approximately $191 billion.[5]

Enforcement Authority

The enforcement authority of OFCCP encompasses several statutes in addition to Executive Order 11246, and the scope of that authority has expanded over the years. Executive Order 11246, as amended, requires affirmative action and nondiscrimination on the bases of race, color, religion, sex, and national origin by covered government contractors and federally assisted construction contractors. In 1972, Congress extended the nondiscrimination and affirmative action requirements for Federal contractors to include Vietnam-era and special disabled veterans.[6] In the next year, section 503 of the Rehabilitation Act of 1973[7] added a requirement that covered government contractors engage in nondiscrimination and affirmative action for qualified "handicapped individu-

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[1] Exec. Order No. 11246, 3 C.F.R. § 339 (1964-65), *reprinted in* 42 U.S.C. § 2000e note (1988).

[2] The name of the office was later changed to the Office of Federal Contract Compliance Programs (OFCCP), its current title.

[3] Exec. Order No. 10925 (1961); 3 C.F.R. § 448 (1959-1963).

[4] Exec. Order No. 12086, 43 Fed. Reg. 46501 (1978).

[5] *Office of Federal Contract Compliance Programs: Director's Report* (FY 1991), p. 20 (hereafter cited as FY 1991 Director's Report).

[6] Vietnam Era Veterans' Readjustment Assistance Act of 1972, Pub. L. No. 92-540, § 503(a), 86 Stat. 1074, 1097 (codified at 38 U.S.C. §§ 2011-2013 (1988)).

[7] 42 U.S.C. § 794 (1988).

als."[8] OFCCP also was given duties with respect to enforcing certain provisions of the Immigration Reform and Control Act of 1986 (IRCA)[9] and Title I of the Americans with Disabilities Act of 1990.[10] Additionally, in 1990, OFCCP was assigned to share responsibility for enforcing the EEO requirements in apprenticeship and training programs with the Bureau of Apprenticeship and Training.[11] Finally, OFCCP is responsible for reviewing employers' policies and practices for adherence with the provisions of the Family and Medical Leave Act of 1993,[12] and referring any apparent violation to the Wage and Hour Division of DOL.

The jurisdictional thresholds for the laws enforced by OFCCP are related to the size of the employer's contract and workforce. Under Executive Order 11246, Federal contractors are covered by the antibias and affirmative action prohibitions if they have a contract for more than $10,000, or if they have several contracts whose aggregate value is more than $10,000. In addition, if they have 50 or more employees and a contract of $50,000 or more, they must prepare and annually update a written affirmative action program (AAP). Special rules apply to construction contractors, who are prohibited from discriminating and must take specified affirmative action steps if they have a contract in excess of $10,000. With respect to disability discrimination, coverage attaches with a single contract in excess of $10,000, and for the disabled and Vietnam era veterans program, a contract of $10,000 or more is required. Under both laws, contractors with 50 employees and a $50,000 contract must maintain written AAPs.

Enforcement Procedures

The enforcement activities of OFCCP focus primarily in four areas: (1) conducting compliance reviews and investigating complaints; (2) negotiating compliance agreements and letters of commitment, and monitoring contractor compliance therewith; (3) providing technical assistance to aid contractor understanding of and compliance with Federal nondiscrimination requirements; and (4) recommending enforcement actions to the Solicitor of DOL, its chief legal officer.[13] The majority of enforcement time is devoted to complaint investigations and compliance reviews. If voluntary compliance cannot be achieved, OFCCP has several options: (a) continue conciliation efforts with the contractor; (b) refer the matter to the Solicitor of Labor to institute formal, administrative enforcement proceedings, or (c) refer the case to the Attorney General for appropriate litigation.[14]

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[8] The 1992 amendments to the Rehabilitation Act changed this terminology to "qualified individuals with disabilities."
[9] Pub. L. No. 99-603, 100 Stat. 3359 (codified at scattered sections of U.S.C.).
[10] 42 U.S.C. §§ 12111-12117 (Supp. 1994).
[11] National Apprenticeship Act of 1937, 50 Stat. 664 (codified at 29 U.S.C. §§ 50-50b (1988)); 29 C.F.R. Part 30 (1993).
[12] Pub. L. No. 103-3, 107 Stat. 6 (1993).
[13] FY 1991 Director's Report, p. 20.
[14] 41 C.F.R. §§ 60-1.26(a)(2), (c), (e) (1993).

Other Activity

OFCCP also seeks to advance employment opportunities for protected classes through special initiatives. In 1989, for example, the Office formally began its "glass ceiling initiative," an 18-month investigation into the causes of and solutions for the absence of minorities and women in middle and upper levels of corporate management. On August 8, 1991, Labor Secretary Martin released a publication summarizing the findings of the OFCCP inquiry on the "glass ceiling."[15] On November 21, 1991, Congress created a 21-member, 4-year Glass Ceiling Commission to study the problem further and to report its findings, conclusions, and recommendations.[16] The final report of the Glass Ceiling Commission was released in March 1995.

Budget Analysis

As noted above, Executive Order 12086 consolidated the compliance activities of 11 agencies in OFCCP and transferred 1,274 full-time positions. Since that time, the resources provided for OFCCP, and consequently the staffing level, have dropped steadily (see figures 16 and 17). The decline in funding and available FTEs appears to have affected the amount of compliance activity, the quality and results of such activity, and the ability to conduct more systemic compliance reviews. The resources requested for OFCCP during the 1980s fluctuated, but always remained substantially lower than the FY 1981 appropriation request (see tables 37 and 38).

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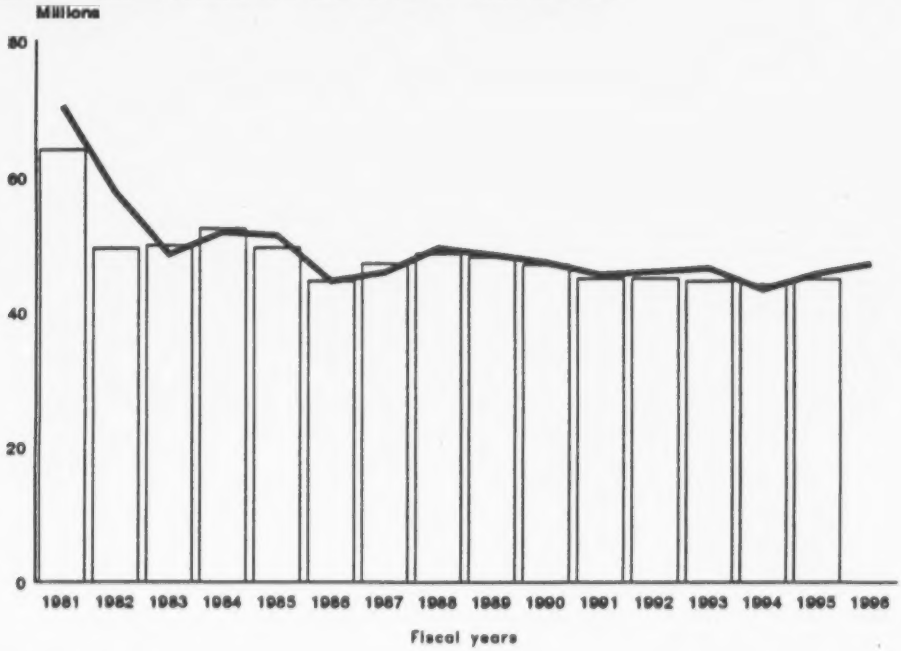
[15] *A Report of the Glass Ceiling Initiative*, U.S. Dept. of Labor (1991).

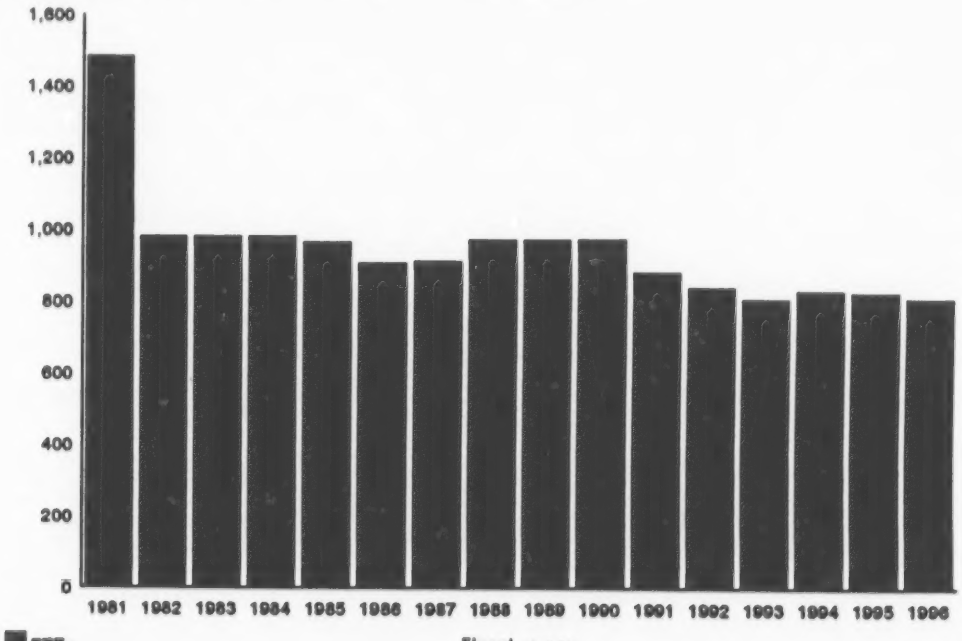
[16] Section 203(a) of the Civil Rights Act of 1991 (Title II of which is entitled the "Glass Ceiling Act of 1991") created the Commission. The Glass Ceiling Act is codified at 42 U.S.C. § 2000e note (Supp. 1994).

FIGURE 16
DOL/OFCCP Funding History, 1981-1996, in 1987 Dollars



— Request ☐ Appropriation

FIGURE 17
DOL/OFCCP Full-Time Equivalent Summary, 1981-1996



■ FTEs

1996 = estimate

TABLE 37
OFCCP Funding History
(In current dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	54,997,000	50,086,000	49,318,000
1982	48,309,000[1]	41,415,000	42,555,000
1983	42,614,000	43,815,000	43,598,000
1984	47,393,000	47,833,000	43,934,000
1985	48,630,000	46,838,000	45,433,000
1986	43,432,000	43,393,000	43,926,000
1987	45,935,000	47,191,000	45,747,000
1988	51,186,000	50,375,000	49,477,000
1989	52,493,000	52,030,000	51,736,000
1990	53,434,000	53,045,000	53,017,000
1991	53,645,000	52,585,000	52,505,000
1992	55,909,000	54,655,000	54,595,000
1993	58,114,000	55,695,000	55,598,000
1994	55,398,000	56,443,000	56,095,000
1995	59,902,000	58,928,000	
1996	63,831,000		

[1] Initial request was $53,762,000

TABLE 38
OFCCP Funding History
(In millions of 1987 constant dollars)

Year	President's request	Congressional appropriation	Actual obligations
1981	70.4	64.1	63.1
1982	57.7	49.5	50.8
1983	48.6	49.9	49.7
1984	51.9	52.4	48.1
1985	51.4	49.6	48.1
1986	44.6	44.6	45.1
1987	45.9	47.2	45.7
1988	49.4	48.6	47.8
1989	48.5	48.1	47.8
1990	47.4	47.0	47.0
1991	45.5	44.9	44.6
1992	45.9	44.9	44.8
1993	46.4	44.5	44.4
1994	43.2	44.0	43.8
1995	45.5	44.7	
1996	47.0		

The most significant decline occurred between the FY 1981 and FY 1982 budgets, when combined reductions by the administration and Congress resulted in a FY 1982 appropriation that was 23 percent lower, in real terms, than the FY 1981 appropriation. Although, in overall terms, appropriated resources declined 25 percent in real spending power from FY 1981 to FY 1989, the period between FY 1982 and FY 1989 represented only a 3 percent decline. Similarly, the actual FTE usage level declined 35 percent between FY 1981 and FY 1989, although 34 percent of that fall occurred between FY 1981 and FY 1982 (see table 39).

Although the actual number of compliance reviews and complaint investigations conducted by OFCCP rose during this period of decreased funding and staffing (see table 40), the effectiveness of such efforts suffered (see table 41).

TABLE 39
OFCCP Staffing History

Year	Staffing level	Year	Staffing level
1981	1,482	1989	970
1982	979	1990	971
1983	979	1991	881
1984	979	1992	839
1985	964	1993	806
1986	906	1994	785
1987	910	1995*	825
1988	970	1996*	808

* Estimate

TABLE 40
OFCCP Workload History

Year	Compliance reviews	Complaints resolved	Year	Compliance reviews	Complaints resolved
1981	3,135	2,136	1989	6,232	1,321
1982	3,081	2,589	1990	6,033	1,295
1983	4,309	2,365	1991	5,379	1,278
1984	5,025	1,246	1992	4,953	1,157
1985	5,217	1,003	1993	4,456	979
1986	5,152	1,100	1994	4,179	802
1987	5,169	1,202	1995*	4,610	1,000
1988	5,474	1,165	1996*	4,610	1,000

* Estimate

TABLE 41
OFCCP Backpay Recovered 1981-1995

Year	Persons rec'g backpay	Total backpay
1981	4,754	5.1M
1982	1,133	2.1M
1983	1,745	3.5M
1984	496	2.7M
1985	299	1.9M
1986	499	1.9M
1987	1,171	5.5M
1988	3,191	8.7M
1989	6,634	21.6M
1990	3,975	15.4M
1991	1,882	11.7M
1992	2,698	11.6M
1993	3,843	14.7M
1994	10,986	14.4M
1995 (3/31/95)	4,178	7.8M

In FY 1981, for example, the number of individuals receiving backpay awards totaled 4,754, but dropped to under 500 for each year between FY 1983 and FY 1986. Similarly, the amount of relief received by those harmed fell from $9.3 million in FY 1981 to under $3 million in the mid-1980s. As the resources and staff provided for OFCCP began to recover after FY 1987, the effectiveness of the compliance reviews and complaint investigations also improved significantly. By FY 1989, 6,630 individuals received backpay awards totaling $21.6 million, a substantial increase over the FY 1981 level.

Lack of funding also affected OFCCP's ability to conduct more far-reaching systemic investigations. Beginning in the late 1970s, OFCCP started conducting "affected class" investigations, which were time consuming due to their complexity, but were productive in the number of workers assisted and the compliance achieved.[17] In FY 1979 there were 403 affected class investigations underway. This fell to 99 in FY 1984, 37 in FY 1986, and 46 in FY 1987.[18] During the 1980s OFCCP also referred fewer and fewer cases to the Solicitor of Labor for enforcement actions. In FY 1981, cases referred to the Solicitor numbered 135. These referrals dropped to 23 in FY 1981, and were further

[17] U.S. Department of Labor, Employment Standards Administration, OFCCP, *Salaries and Expenses FY 1981*, pp. 17-18 (hereafter cited as OFCCP FY 1981 Budget).

[18] *Ibid.* at 18; Majority Staff of House Committee on Education and Labor, 100th Cong., 1st Sess., *Report on the Investigation of the Civil Rights Enforcement Activities of the Office of Federal Contract Compliance Programs, U.S. Department of Labor* 4 (Comm. Print 1987) (hereafter cited as 1987 Comm. Staff Report).

reduced to an average of 45 referrals between FY 1983 and FY 1986 (see table 42). As funding and staff began to rebound after FY 1986, so did the referral rate, climbing to over 100 in FY 1988 and FY 1989.

TABLE 42
OFCCP Referrals to Solicitor 1981-1994

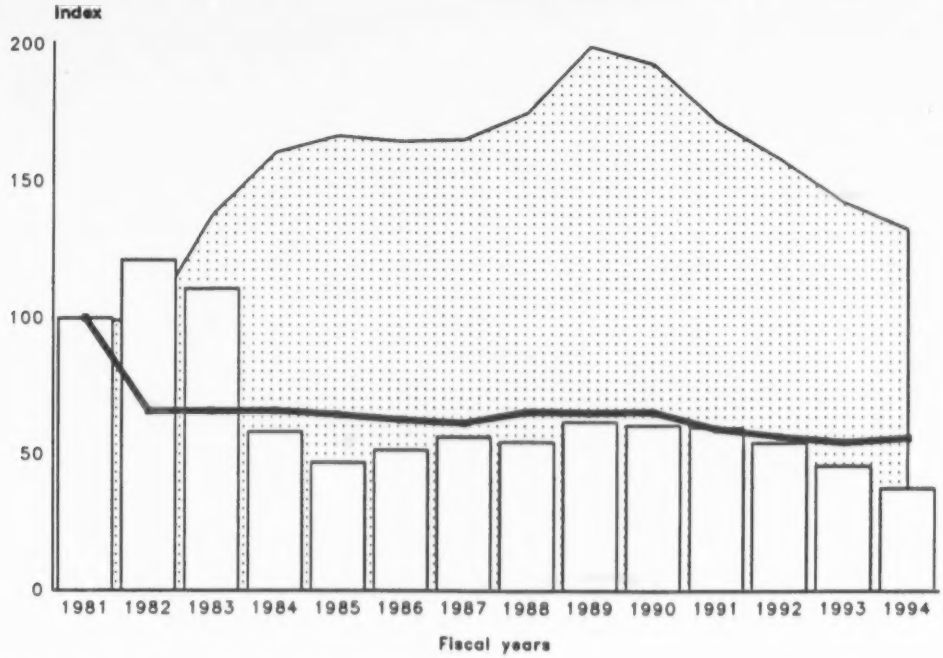
Year	Referrals to DOL Solicitor	Year	Referrals to DOL Solicitor
1981	135	1988	123
1982	23	1989	115
1983	54	1990	88
1984	66	1991	83
1985	22	1992	53
1986	35	1993	46
1987	n/a	1994	75

The resources requested and appropriated for OFCCP, in constant dollars, continued to fall after FY 1989, along with the FTE level (see tables 37, 38 and 39). The resources requested from FY 1989 to FY 1993 fell by 4 percent in constant dollars. The money actually appropriated by Congress declined 7.5 percent in real spending power, and the FTE level continued to fall, from 968 in FY 1989 to 806 in FY 1993, a decline of 7 percent. The erosion of OFCCP's staff adversely affected enforcement activity. The number of compliance reviews conducted fell by 28 percent, from 6,232 in FY 1989 to 4,456 in FY 1993 (see figure 18 and table 40). After reaching a high in FY 1989, the number of persons receiving backpay began to fall, declining 42 percent from FY 1989 to FY 1993 (see table 41). The number of complaints resolved also declined, from 1,321 in FY 1989 to 979 in FY 1993, a drop of 26 percent.

This decrease in staff also diminished OFCCP's effectiveness, by restricting its ability to conduct compliance activities outside of district office cities. OFCCP had limited resources for litigation support, reducing its ability to seek sanctions in cases referred to the Solicitor for administrative enforcement.[19] Referrals to the Solicitor, after rebounding in FY 1989, began to decline, falling to 46 in FY 1993 (see table 42). Furthermore, although this period brought new responsibilities for OFCCP, including enforcement of EEO requirements in apprenticeship and training programs, the ADA, and the Glass Ceiling Initiative, funding for training and development had been virtually

[19] U.S. Department of Labor, Employment Standards Administration, OFCCP, *Salaries and Expenses FY 1994*, p. 29 (hereafter cited as OFCCP FY 1994 Budget).

FIGURE 18
DOL/OFCCP Staffing, Complaints Resolved, and Compliance Reviews, 1981-1994



1981 = 100; FTEs, 1,482; complaints resolved, 2,136; compliance reviews, 3,135.

eliminated. As of FY 1994, compliance officers had not received training for over 4 years.[20]

From FY 1993 to the FY 1996, resources requested increased 1.3 percent in constant dollars (see table 38). The FY 1996 request is still 33 percent lower, in real terms, than the FY 1981 request. Resources appropriated by Congress between FY 1993 and FY 1995 increased only 0.4 percent in real spending power, and the FY 1995 appropriation provided 30.3 percent less spending power than the FY 1981 appropriation. The 1996 budget request provides an increase of nearly $5 million over the FY 1995 appropriation, or 5 percent in real terms, but will result in a decrease of 17 FTEs, as required by Executive Order 12839.[21] The additional funding will be targeted toward compliance assistance, enforcement travel, litigation support, training for compliance officers and managers, and ADP equipment. This will allow OFCCP to conduct enforcement

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[20] *Ibid.*
[21] 58 Fed. Reg. 8515 (1993).

activities outside of district office cities and to continue to refer cases to the Solicitor for administrative enforcement.[22] However, the fall in staffing will continue to hamper OFCCP's ability to conduct more comprehensive compliance reviews and complaint investigations. The predicted staffing level for FY 1996 of 808 FTEs still represents a reduction of 46 percent from the FY 1981 FTE level.

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[22] U.S. Department of Labor, Employment Standards Administration, OFCCP, *Salaries and Expenses FY 1996*, pp. 31-33 (hereafter cited as OFCCP FY 1996 Budget).

CONCLUSION

In 1982, the Commission concluded that "the proposed FY 83 budget [was] a new low point in a disturbing trend of declining support for civil rights enforcement."[1] This current study demonstrates that both the President and the Congress have retreated from their obligation to ensure that adequate resources are provided for civil rights enforcement.[2]

Overall, the number of full-time equivalent positions dedicated to Federal civil rights enforcement declined by 19 percent from FY 1981 to FY 1994. The FY 1996 budget would increase the FTE level by 6.4 percent, or 389 FTEs, over the FY 1994 level, but would still fall 1,067 FTEs, or 14.2 percent, below the FY 1981 level. More specifically:

- While complaints received by HHS/OCR are projected to be 44 percent higher in FY 1996 than in FY 1981, staff would be half the FY 1981 level. Staff allocated to compliance reviews would be just one-quarter the FY 1981 level.
- At DOE/OCR, complaints receipts projected for FY 1996 would be 120 percent higher than the FY 1981 level, but staff would be 25 percent less.
- OFCCP's staff under the FY 1996 budget would be 46 percent of the FY 1981 level.
- The situation for the Equal Employment Opportunity Commission is particularly critical. The projected number of complaint receipts for FY 1996 is 76 percent higher than FY 1981. However, the requested FTE level is still below the FY 1981 level, assuming that Congress funds all the requested positions. In FY 1994, EEOC had 526 fewer FTEs than in FY 1981.
- FHEO's staff would increase to 735 FTEs under the FY 1996 budget request, 16 percent higher than the FY 1981 level. Yet Title VIII complaints will have risen 116 percent, and program compliance complaints will have increased substantially.
- DOJ/CRD staff under the FY 1996 budget request will be 40 percent higher than the FY 1981 level. However, over that same period, the workload at the CRD has undergone an enormous growth.

Thus, even though the workloads of the enforcement agencies have more than doubled since FY 1981, due primarily to the passage of major new civil rights legislation, the resources available to deal with the demand have lagged far behind. With diminished staffs, agencies cut back on comprehensive reviews, investigations, and

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[1] *1982 Budget Report*, p. 68.

[2] *See also Fair Housing Report*, p. 221 (finding that "resources provided by Congress and the President have fallen well short of what is needed by HUD to carry out its new responsibilities.").

litigation, as resources were focused on the growing complaint workload. Consequently, fewer beneficiaries were assisted, as agencies were forced to take a reactive, instead of a proactive, approach to civil rights enforcement. Although it will take a significant commitment on the part of Congress and the administration to overcome the past years of neglect, the FY 1996 budget request is a step in the right direction. As our National leaders strive to reduce Federal spending and balance the budget, they must not abandon their responsibility to ensure that Federal civil rights laws are fully and effectively enforced and must remember that "[w]e don't balance. . .the budget or cut the deficit on the backs of civil rights violations."[3]

[3] U.S. Congress, House, Subcommittee on the Departments of Commerce, Justice and State, the Judiciary and Related Agencies of the Committee on Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1994*, 103d Cong., 1st Sess., 1993, p. 141 (statement of Representative Harold Rogers).